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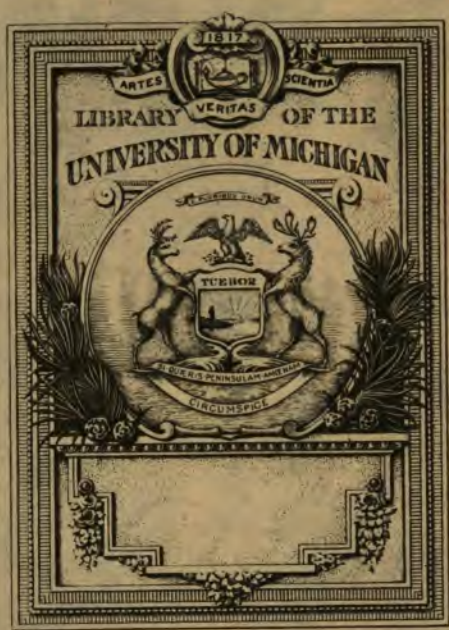
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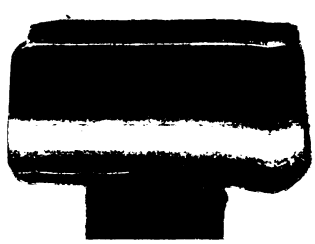


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INVESTIGATION OF PANAMA CANAL MATTERS.

HEARINGS

BEFORE THE

U. S. Congress senate

COMMITTEE ON INTEROCEANIC CANALS

OF THE

UNITED STATES SENATE

IN THE MATTER OF THE SENATE RESOLUTION
ADOPTED JANUARY 9, 1906,

PROVIDING FOR

AN INVESTIGATION OF MATTERS RELATING
TO THE PANAMA CANAL, ETC.

IN FOUR VOLUMES.

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ISTHMIAN CANAL.

COMMITTEE ON INTEROCEANIC CANALS,
UNITED STATES SENATE,
Washington, D. C., Thursday, April 26, 1906.

The committee met at 10.30 o'clock a. m.

Present: Senators Kittredge (acting chairman), Dryden, Ankeny, Morgan, and Taliaferro.

TESTIMONY OF ALFRED ANDERSON, ESQ.

Mr. ANDERSON was duly sworn and testified as follows:

The ACTING CHAIRMAN. State your name, Mr. Anderson.

Mr. ANDERSON. Alfred Anderson.

The ACTING CHAIRMAN. Where is your residence?

Mr. ANDERSON. 32 West Ninety-eighth street, New York.

The ACTING CHAIRMAN. What is your business?

Mr. ANDERSON. Assistant purchasing agent of the Panama Railroad and the Isthmian Canal Commission.

The ACTING CHAIRMAN. How long have you held that position?

Mr. ANDERSON. Of the Isthmian Canal Commission, a little over a year; of the Panama Railroad, about six years.

The ACTING CHAIRMAN. Prior to the time you became connected with the Isthmian Canal Commission you devoted your entire attention to your duties as purchasing agent for the railway company?

Mr. ANDERSON. Yes, sir.

The ACTING CHAIRMAN. What was your occupation prior to the time of your connection with the railway company?

Mr. ANDERSON. Prior to the time I was appointed purchasing agent I was in the secretary's office for about two years.

The ACTING CHAIRMAN. In what capacity?

Mr. ANDERSON. Clerk in the secretary's office.

The ACTING CHAIRMAN. And what was your business prior to that time?

Mr. ANDERSON. I was in the employ of various railroad companies in different capacities.

The ACTING CHAIRMAN. As purchasing agent?

Mr. ANDERSON. No, sir; in the maintenance of way department, and general manager's office, and general superintendent's office.

The ACTING CHAIRMAN. And for what length of time were you employed with the railway companies to which you have referred?

Mr. ANDERSON. From the time I was 17 until the time I went with the Panama Railroad Company.

The ACTING CHAIRMAN. What were your duties as purchasing agent of the Panama Railway Company?

Mr. ANDERSON. To purchase all material required at the Isthmus and in New York and for the Panama Railroad Steamship Line, their fleet of steamers.

The ACTING CHAIRMAN. Under whose supervision or direction did you conduct that business?

Mr. ANDERSON. That of the general manager.

The ACTING CHAIRMAN. Reporting to him?

Mr. ANDERSON. To the general manager; yes, sir.

Senator MORGAN. Who was he?

Mr. ANDERSON. Charles Paine was general manager for a while, and afterwards Mr. Drake was general manager.

The ACTING CHAIRMAN. When you became connected with the Canal Commission in the capacity you have mentioned, in what respect, if any, did your duties differ?

Mr. ANDERSON. The duties of the assistant purchasing agent of the Canal Commission are largely in the way of forwarding material. I devote more time to that than I do to the purchase of material.

The ACTING CHAIRMAN. You have conducted purchases for the Canal Commission?

Mr. ANDERSON. Yes, sir.

The ACTING CHAIRMAN. Under whose direction are you working with the Canal Commission?

Mr. ANDERSON. Under the general purchasing officer.

The ACTING CHAIRMAN. Mr. Ross?

Mr. ANDERSON. Mr. Ross; yes, sir.

The ACTING CHAIRMAN Reporting to him?

Mr. ANDERSON. Reporting to Mr. Ross.

The ACTING CHAIRMAN. Do you report to the general manager of the Panama Railway Company in what you do for the Canal Commission?

Mr. ANDERSON. No, sir.

The ACTING CHAIRMAN. In what manner are your records kept to determine for which company you do work?

Mr. ANDERSON. The records are entirely separate, you know. We have separate requisitions and separate systems of filing. The records of the two concerns are absolutely distinct.

The ACTING CHAIRMAN. Have you, since you have been serving in the dual capacity you have mentioned, made any purchases for the Canal Commission through the railway company?

Mr. ANDERSON. No, sir; not that I know of.

The ACTING CHAIRMAN. State just what your duties are as purchasing agent of the railway company and as assistant purchasing agent of the Canal Commission, and the procedure you take in order to perform your duties.

Mr. ANDERSON. In regard to the purchasing for the Panama Railroad Company, the supplies required at the Isthmus come up on what is called Isthmian requisitions. They are subdivided into three different kinds. There is one requisition that is prepared by the commissary down there calling for commissary stores of various kinds. There is a separate requisition which is prepared by the storekeeper calling for what we term material stores—that is, all stores other than those required by the commissary department—and there is another

requisition that comes up for stationery. Those three requisitions are the ones we receive from the Isthmus.

In addition to that, there are requisitions made upon me for the requirements of the New York and pier offices—stationery and various office fixtures. Then we have a requisition which we fill every week for the various stores required by the steamers of the Panama Railroad Steamship Line. Those are all the requisitions that are filled by me for the Panama Railroad Company.

The ACTING CHAIRMAN. Who sends the requisitions from the Isthmus?

Mr. ANDERSON. The commissary requisitions are sent to me by Mr. Burnett, the manager of the commissary department. The material stores requisitions are sent to me by the superintendent.

Senator MORGAN. The superintendent of what?

Mr. ANDERSON. Of the railroad company.

Senator MORGAN. Who is he?

Mr. ANDERSON. Mr. Bierd; and all those requisitions are approved by Mr. Stevens, the vice-president and general manager of the Panama Railroad Company.

The ACTING CHAIRMAN. Prior to the time Mr. Stevens took charge, who approved these requisitions?

Mr. ANDERSON. Prior to that time there was no subdivision in the requisitions down there, as all the requirements were in charge of the commissary, and those requisitions were approved by the commissary and by the superintendent, Mr. Bierd.

The ACTING CHAIRMAN. Through whom do you receive requisitions for supplies for the Canal Commission?

Mr. ANDERSON. Mr. Ross.

The ACTING CHAIRMAN. Are they approved by anyone?

Mr. ANDERSON. The requisitions are prepared at the Isthmus, and signed by the head of the department requiring the material, approved by the chief engineer, and transmitted to Mr. Ross, and he sends over to me such parts of those requisitions as he wants me to fill in New York.

The ACTING CHAIRMAN. Did you furnish the new ships that were purchased last year?

Mr. ANDERSON. No; I had nothing to do with that transaction.

The ACTING CHAIRMAN. Who had that matter in charge?

Mr. ANDERSON. I do not know, but I think it was Mr. Drake.

Senator MORGAN. You say that when Mr. Ross sent you requisitions he would send you parts of requisitions?

Mr. ANDERSON. Yes; he would notify me to the effect that the following material was called for under a certain number (as we call it), Canal Zone requisition, and direct that I make purchase of that material.

Senator MORGAN. After you made the purchase, to whom did you report it?

Mr. ANDERSON. I would report to Mr. Ross; at the same time of course communicating with the general storekeeper at the Isthmus of the Isthmian Canal Commission, advising him what I had done, and sending him the necessary invoices, etc., so as to enable him to identify and accept delivery of the material upon its arrival at the Isthmus.

Senator MORGAN. When your purchases were made, to whom were they submitted? I mean those made for the Canal Commission.

Mr. ANDERSON. I sent to Mr. Ross a complete record of all transactions.

Senator MORGAN. Were any of them ever rejected?

Mr. ANDERSON. No, sir.

Senator MORGAN. As a matter of course, if you made a purchase under a requisition that he sent you, and you sent the account to him, he would approve it?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. To what extent have you made purchases since Ross went into office?

Mr. ANDERSON. They have not been considerable. They do not amount to much, Senator.

Senator MORGAN. Have you the record of it?

Mr. ANDERSON. I have not a record of the total cost of it; no, sir.

Senator MORGAN. What kind of materials do you buy on Ross's requisitions from the Isthmus?

Mr. ANDERSON. It would be hard to classify it. It is almost everything, you know—various kinds of material.

Senator MORGAN. In large amounts?

Mr. ANDERSON. No, sir; the amounts are not large.

Senator MORGAN. Let us have about the largest amounts, some of the largest amounts that you have purchased.

Mr. ANDERSON. The requisitions sent me by Mr. Ross for account of the Isthmian Canal Commission, I do not think, in any instance, exceeded $1,500.

Senator MORGAN. What were they? What was the character of the material that you purchased?

Mr. ANDERSON. Oh, it would be stationery and drawing material, miscellaneous light hardware, small supplies for the sanitary department down there, and things of that kind.

Senator TALIAFERRO. Do they buy their stationery in New York?

Mr. ANDERSON. For the Isthmian Canal Commission?

Senator TALIAFERRO. Yes.

Mr. ANDERSON. Occasionally; small lots that are urgently required. It is only requisitions of that kind that are transmitted to me in New York. Requisitions received from the Isthmus calling for a considerable quantity of material, permitting wide advertisement, are always filled by the Washington office.

Senator TALIAFERRO. Are your purchases advertised?

Mr. ANDERSON. Yes, sir.

Senator TALIAFERRO. Always?

Mr. ANDERSON. Always.

Senator TALIAFERRO. For what length of time?

Mr. ANDERSON. In the purchase of small amounts, we would only advertise in this way—by posting on the bulletin board, and by requesting competitive bids from concerns that we know are competent to bid upon that class of material.

Senator TALIAFERRO. The bulletin board in your office?

Mr. ANDERSON. In the hall; yes, sir.

Senator MORGAN. Have you always made your purchases from persons who made biddings under those advertisements?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. None outside? Did they make regular biddings?

Mr. ANDERSON. We try to get as many bids as we possibly can.

Senator MORGAN. Are the bids formal? Are they written out?

Mr. ANDERSON. Oh, by all means; yes, sir. We have a regular circular prepared, you know.

Senator MORGAN. Have you made any purchases except those on which you received formal written biddings?

Mr. ANDERSON. Not that I know of; no, sir.

Senator TALIAFERRO. You would know if you had made any purchases without that?

Mr. ANDERSON. Yes; I would know that.

Senator TALIAFERRO. Then why do you answer "not that I know of?"

Mr. ANDERSON. It is possible one may have escaped me that I do not know about, you know, Senator. It is quite improbable, however.

Senator TALIAFERRO. I just wanted you to be sure of it.

Mr. ANDERSON. Yes, sir.

Senator TALIAFERRO. I did not mean to imply that you were not stating the case fairly.

Senator MORGAN. Does anybody inspect the purchases after you have made them?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Who?

Mr. ANDERSON. We have an inspecting engineer, with a corps of assistants, whose duty it is to inspect materials purchased.

Senator MORGAN. An inspecting engineer and a corps of assistants? Is that for the railroad company, or for the canal?

Mr. ANDERSON. For both.

Senator MORGAN. You have one for each?

Mr. ANDERSON. No, sir. The inspecting engineer serves for both the Panama Railroad Company and the Isthmian Canal Commission.

Senator MORGAN. What is about the extent of that establishment? How many assistants has he?

Mr. ANDERSON. As a general thing, I should say he had about eight or ten in his office—not all employed in the inspection of material, but in preparing plans and specifications and drawings, and things of that kind.

Senator MORGAN. For what?

Mr. ANDERSON. For the various materials called for by the requisitions from the Isthmus. The requisitions sometimes are very indefinite, and in order to get intelligent bids it is required that we send blueprints and specifications with our circular letters of inquiry, and those are prepared by our inspecting engineer.

Senator MORGAN. That only relates to machinery, does it not?

Mr. ANDERSON. It relates to a good many things besides machinery.

Senator MORGAN. What is the name of this inspector general there?

Mr. ANDERSON. Mr. Allwork.

Senator MORGAN. That is a good name. You say he has a corps of about ten assistants?

Mr. ANDERSON. I should think about that number.

Senator MORGAN. So whenever you made a purchase you turned over the account to him and he went and inspected the goods?

Mr. ANDERSON. Not in every instance.

Senator MORGAN. Why not?

Mr. ANDERSON. Sometimes we made inspection of the material ourselves.

Senator MORGAN. You and who else?

Mr. ANDERSON. We have a warehouse in New York which was created for the purpose of inspection of material, and we have a warehouseman up there who sometimes makes inspections for account of my office.

Senator MORGAN. Is he an officer of the railroad?

Mr. ANDERSON. Jointly with the Isthmian Canal Commission.

Senator MORGAN. He inspects for the railroad purchases?

Mr. ANDERSON. And for the Isthmian Canal Commission, both, occasionally.

Senator MORGAN. Who authorizes him to inspect for the Canal Commission?

Mr. ANDERSON. Mr. Ross.

Senator MORGAN. By a special order?

Mr. ANDERSON. That was the general understanding.

Senator MORGAN. The general understanding?

Mr. ANDERSON. That was under the general instructions to myself.

Senator MORGAN. You really made the appointment?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Do you suppose Mr. Ross knows the name of that man?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Do you suppose that the governor of the Zone knows it?

Mr. ANDERSON. The name of the warehouseman?

Senator MORGAN. Yes.

Mr. ANDERSON. I do not think he does.

Senator MORGAN. It was business that was left pretty much in charge of the officials, or so-called officials, of the railroad company and of the Panama Canal Commission, acting together and cooperating; it was left in charge of the management in New York?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Now, the controlling management in this affair was the railroad company, was it not?

Mr. ANDERSON. In what respect?

Senator MORGAN. In regard to the purchases and the inspection and the shipment and everything about it.

Mr. ANDERSON. No, sir; it is the Isthmian Canal Commission.

Senator MORGAN. Nominally, yes; but I am talking about actually.

Mr. ANDERSON. No, sir; the Isthmian Canal Commission.

Senator MORGAN. Does not Mr. Drake superintend all these things?

Mr. ANDERSON. No, sir. I am under the direct instructions of Mr. Ross.

Senator. MORGAN. I know about your instructions, but I want to know what you did under them.

Mr. ANDERSON. I act entirely under the instructions of Mr. Ross.

Senator MORGAN. And you acted independently of Drake?

Mr. ANDERSON. I occasionally consult with Mr. Drake about the larger matters.

Senator MORGAN. Relating to Isthmian purchases?

Mr. ANDERSON. Not so much about that, except in the larger class of material.

Senator MORGAN. I am speaking about the larger ones.
Mr. ANDERSON. Yes, sir.
Senator MORGAN. You conferred with Mr. Drake about it?
Mr. ANDERSON. Yes, sir; but I only take instructions, you know, from Mr. Ross.
Senator MORGAN. But you took advice from Mr. Drake?
Mr. ANDERSON. Yes, sir.
Senator MORGAN. Did Mr. Ross instruct you in those cases what to do?
Mr. ANDERSON. Yes, sir.
Senator MORGAN. You have records of all of that?
Mr. ANDERSON. Yes, sir. Mr. Ross's instructions are final.
Senator MORGAN. You report all of your purchases made for the Isthmian Canal Commission to Mr. Ross?
Mr. ANDERSON. Yes, sir.
Senator MORGAN. Mr. Ross has not been there personally to make any inspection, has he?
Mr. ANDERSON. Frequently.
Senator MORGAN. He has frequently been there?
Mr. ANDERSON. Yes, sir.
Senator MORGAN. To overlook your business?
Mr. ANDERSON. Yes, sir.
Senator MORGAN. How do you get the money to pay for these purchases?
Mr. ANDERSON. For the Isthmian Canal Commission?
Senator MORGAN. Yes.
Mr. ANDERSON. I certify on invoices covering the cost of the material to the effect that the material has been received and forwarded to the Isthmus, and the inspecting engineer, or his representative, certifies that the material is in accordance with the specifications. I transmit all those documents to Mr. Ross with a record of the entire transaction showing that the material was advertised and who were requested to bid; and copies of all bids go to Mr. Ross with my certificate showing what action I have had. Then I understand that they are approved by him and referred to the auditor for payment.
The ACTING CHAIRMAN. May I ask a question here, Senator Morgan?
Senator MORGAN. Certainly.
The ACTING CHAIRMAN. Is your action final in the matter of the acceptance of bids?
Mr. ANDERSON. Yes, sir.
The ACTING CHAIRMAN. Does Mr. Ross have no concern with the bids that are intrusted to you to look after?
Mr. ANDERSON. Only occasionally, if he specifically instructs me to that effect; not otherwise.
Senator MORGAN. In accepting bids for the material that you purchase for the Isthmian Canal Commission, do you always accept the lowest bid?
Mr. ANDERSON. Generally—nearly always.
Senator MORGAN. In the cases where you made differences, what was the ground of the difference? Why did you leave the lowest bid and go to a higher one?
Mr. ANDERSON. Sometimes the time of delivery is a very important factor in determining the award.
Senator MORGAN. But that is put in the bidding?

Mr. ANDERSON. That is in the bid; yes, sir.
Senator MORGAN. Very good.
Mr. ANDERSON. If we require material very urgently, and one man can make delivery in a week and another man in a month, it is sometimes economy to accept the bid that is based on the quickest delivery.
Senator MORGAN. But the time of delivery is put in every specification?
Mr. ANDERSON. Exactly. We always ask to have them state the earliest possible date of delivery.
Senator MORGAN. As early as possible?
Mr. ANDERSON. Yes, sir.
Senator MORGAN. You do not require delivery at a certain time?
Mr. ANDERSON. Not at a specific date; no, sir.
Senator MORGAN. Is that the only reason for changing from the lower to the higher bid?
Mr. ANDERSON. Yes, sir.
Senator MORGAN. That is the only one?
Mr. ANDERSON. Yes, sir; unless we have reason to suppose that the material will not be in accordance with the specifications.
Senator MORGAN. Unless you have reason to suppose that?
Mr. ANDERSON. Yes, sir; or if for any reason we will not be able to inspect the material, and the concern is not responsible, it is possible that we may, in a case of that kind, reject the lowest bidder.
Senator MORGAN. Such things have occurred?
Mr. ANDERSON. I dare say they have.
Senator MORGAN. Do you not know it?
Mr. ANDERSON. I think they have in one or two instances.
Senator MORGAN. What instances?
Mr. ANDERSON. I do not remember; but those things have occurred years ago, you know, and I have forgotten what they were.
Senator MORGAN. After you get the requisition you go out and make the purchase?
Mr. ANDERSON. Yes, sir.
Senator MORGAN. You do not see the goods before you purchase them?
Mr. ANDERSON. No, sir.
Senator MORGAN. Then you have the goods inspected?
Mr. ANDERSON. Yes, sir.
Senator MORGAN. And then they are shipped?
Mr. ANDERSON. Yes, sir.
Senator MORGAN. By whom?
Mr. ANDERSON. By me.
Senator MORGAN. They are delivered to you in New York?
Mr. ANDERSON. They are either delivered to the warehouse or they are delivered direct to the pier.
Senator MORGAN. They are really delivered to you?
Mr. ANDERSON. Exactly.
Senator MORGAN. You become the actual legal custodian of them after they are delivered?
Mr. ANDERSON. Yes, sir.
Senator MORGAN. They are either delivered free on board the ship or they are delivered at the wharf or at the warehouse?
Mr. ANDERSON. At the warehouse.
Senator MORGAN. And you have the entire charge of them?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Do these inspectors that look over the goods which you have bought make a report to you?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. In writing?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. You have those reports?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Do you always follow their reports in buying?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. You take no goods except such as have been inspected by them and reported upon by them?

Mr. ANDERSON. We do with the Panama Railroad Steamship line. The material for the steamship line is not inspected by the inspecting engineer.

Senator MORGAN. Who inspects for that concern?

Mr. ANDERSON. We have a man on the dock who makes inspection of that material.

Senator MORGAN. And who appoints him?

Mr. ANDERSON. He is appointed by the secretary.

Senator MORGAN. What secretary?

Mr. ANDERSON. Mr. Drake.

Senator MORGAN. Do you call Mr. Drake the secretary?

Mr. ANDERSON. Well, the secretary's office—yes, sir. We call his office the secretary's office.

Senator MORGAN. I thought he was assistant to the president.

Mr. ANDERSON. He is also secretary.

Senator MORGAN. And what else?

Mr. ANDERSON. And treasurer.

Senator MORGAN. And what else?

Mr. ANDERSON. That is all.

Senator MORGAN. He is really the general manager, the superintendent, and the factotum of the whole business there, is he not?

Mr. ANDERSON. He has charge there in the absence of the president; yes, sir.

Senator MORGAN. He is the real man in actual authority there?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. And he controls both sides—the isthmian side of it and the railroad side of the purchases?

Mr. ANDERSON. No, sir; he does not.

Senator MORGAN. He does not?

Mr. ANDERSON. No, sir; he does not. He has nothing to do with me in so far as the Isthmian Canal Commission is concerned.

Senator MORGAN. Except to give advice?

Mr. ANDERSON. I do not ask him for advice about the Isthmian Canal Commission.

Senator MORGAN. I misunderstood you, then.

Mr. ANDERSON. About the Panama Railroad, I meant, Senator.

Senator MORGAN. He never gave you advice about purchases for the Isthmian Canal Commission?

Mr. ANDERSON. No, sir; he knows nothing about it.

Senator MORGAN. Who supervises you in regard to those purchases?

Mr. ANDERSON. Mr. Ross, at Washington.

Senator MORGAN. Mr. Ross lives here, and you live in New York?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. It is not much of a supervision, is it?

Mr. ANDERSON. Well, I have complete charge of the New York office.

Senator MORGAN. And you have not any supervisor residing there?

Mr. ANDERSON. No, sir.

Senator MORGAN. In regard to the Isthmian Canal purchases?

Mr. ANDERSON. I have not.

Senator MORGAN. Can you furnish this committee with a tabular statement of the purchases that you have made since the railroad was turned over to the Government, on behalf of the canal, or since you were appointed? I will state it that way—since you were appointed as purchasing agent for the Canal Commission. Can you furnish this committee with a tabulated statement of the purchases you have made, the persons from whom you made them, the prices you paid, the dates of purchase, and the dates of delivery?

Mr. ANDERSON. I could do that. It would be a rather large job.

Senator MORGAN. Well, nothing ought to be too large, you know, for an establishment as big as that.

Mr. ANDERSON. It is a pretty big job, but I can get it out for you, if you so direct.

Senator MORGAN. I would like very much to see it.

Mr. ANDERSON. All right, sir.

(By request of Senator Morgan the stenographer read the following from his question as above set forth.)

"Can you furnish this committee with a tabulated statement of the purchases you have made, the persons from whom you made them, the prices you paid, the dates of purchase, and the dates of delivery?"

Mr. ANDERSON. From the time that I was appointed purchasing agent of the Isthmian Canal Commission?

Senator MORGAN. Yes.

Mr. ANDERSON. To date?

Senator MORGAN. Yes; I suppose you did not know anything about it before that time?

Mr. ANDERSON. No, sir. Perhaps I had better explain that to you.

Senator MORGAN. Yes.

Mr. ANDERSON. I was connected with the Isthmian Canal Commission, in a way, prior to the time that I was appointed assistant purchasing agent.

Senator MORGAN. What way was that?

Mr. ANDERSON. About two years ago, I think it was, during the administration of the first commission. They did not have a purchasing department and they availed of my services as purchasing agent of the Panama Railroad Company to make purchases for account of the Isthmian Canal Commission, which I did in my capacity of purchasing agent of the Panama Railroad Company.

Senator MORGAN. About how long did you serve them in that capacity?

Mr. ANDERSON. About four or five months.

Senator MORGAN. I would like to get the same table from you in regard to that term of service.

Mr. ANDERSON. I did prepare data of that kind for the House committee here about a year ago, and my testimony at that time covers all of that, Senator.

Senator MORGAN. Will that bring it up to date?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. We have not that statement, so we will have to ask you to prepare another one, or make a replica of that one.

The ACTING CHAIRMAN. Perhaps Mr. Anderson can incorporate in his report of what happened since he was formally attached to the Canal Commission the statement that he made before the House committee. Would that answer your purpose, Senator Morgan?

Senator MORGAN. I can not tell much about whether it would or not without seeing it. I have not seen it.

The ACTING CHAIRMAN. When did you testify before the House committee?

Mr. ANDERSON. About a year ago.

The ACTING CHAIRMAN. In connection with the examination into the affairs of the railway company?

Mr. ANDERSON. Yes, sir; yes, sir. I explained at that time what the purchases were, what they amounted to, and how they were made. I went into the matter quite fully.

The ACTING CHAIRMAN. That was a year ago last winter, was it not?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. By whom were you appointed purchasing agent for the Isthmian Canal Commission?

Mr. ANDERSON. By Major Gallagher, who was then purchasing agent.

Senator MORGAN. He was living here; he had his office here?

Mr. ANDERSON. Yes, sir; I was going to explain—pardon me. I said I was with them for four or five months, which is true. At the expiration of that time they relieved me from the purchase of material for the Isthmian Canal Commission, and it was done through the Washington office here until such time as Major Gallagher was appointed. But in the interim they felt it necessary to have somebody in New York duly authorized to certify to the receipt of material, which was necessary preliminary to the payment of the voucher; and for that reason they appointed me as shipping agent of the Isthmian Canal Commission, and I occupied that position until the time I was appointed assistant purchasing agent at New York. My duties as shipping agent were to forward all materials bought f. o. b. New York, certify to its receipt, send the necessary invoices to the Isthmus, and keep the Isthmus advised of what was going forward. I still do that, of course, in my present capacity.

Senator TALIAFERRO. Did I understand you to say that you made these purchases on bids?

Mr. ANDERSON. Yes, sir.

Senator TALIAFERRO. Do you generally receive more than one bid?

Mr. ANDERSON. I do not think we have made more than one or two purchases on one bid.

Senator TALIAFERRO. What do you do with the bids?

Mr. ANDERSON. We send them to Mr. Ross.

Senator TALIAFERRO. They are preserved?

Mr. ANDERSON. Yes, sir.

Senator TALIAFERRO. When you received a requisition from Mr. Ross from the Isthmus were you not informed when the goods were required?

Mr. ANDERSON. I was directed to make purchase and ship as early as possible; no specific date was given.

Senator TALIAFERRO. And in asking for bids you followed that suggestion?

Mr. ANDERSON. Yes, sir.

Senator TALIAFERRO. You followed that idea?

Mr. ANDERSON. Yes, sir.

Senator TALIAFERRO. So that the question of promptness of delivery entered frequently into your conclusions as to which bid you should accept, without regard to whether it were the higher or the lower bid?

Mr. ANDERSON. Yes, sir.

Senator TALIAFERRO. Have your purchases for the railroad company been extensive?

Mr. ANDERSON. I have a memorandum showing what they were for the last year—for the year 1905. It is the only copy I have, Senator.

Senator TALIAFERRO. You can read it, Mr. Anderson.

Mr. ANDERSON. This covers purchases made last year.

Senator MORGAN. Between what dates?

Mr. ANDERSON. Between January 1 and December 31.

Senator MORGAN. That is the fiscal year for the railroad company?

Mr. ANDERSON. Yes, sir; but I want to remark that I was not purchasing agent for the Panama Railroad for a part of that period. When I was appointed purchasing agent for the Isthmian Canal Commission I resigned my position as purchasing agent for the railroad company, at the request of Major Gallagher, my superior. But when Mr. Ross was appointed to succeed Major Gallagher he consolidated the two offices, and a large part of these purchases (nearly all the heavier items) were purchased during the time I was acting for the Commission solely. This heavy equipment, you know, was purchased by the then purchasing agent, not myself.

Senator MORGAN. These purchases are for which establishment?

Mr. ANDERSON. For the Panama Railroad.

Senator MORGAN. Please read that statement.

(Mr. Anderson thereupon read aloud the following statement:)

Material shipped to Isthmus, 1905.

MATERIAL STORES.

Locomotives	$148,200.00
Cargo launches	32,495.00
Coal	186,657.33
Freight on coal	87,890.40
Lumber, etc	69,222.15
Freight on lumber	28,569.24
Rails, frogs, etc	83,069.28
Freight charges, New York to Colon	42,785.73
Bar iron	39,409.90
Pipe, etc	12,274.26
Oil and lubricants	18,932.29
Bolts and nuts	6,350.73
Nails and spikes	12,947.18
Cement, etc	5,592.30
Rope and twine	23,277.90
Rubber goods	10,259.83
Shovels, etc	972.96
Paints, leads, etc	33,110.20
Forage	1,625.95

Stoves	$3,388.66
Glass	1,571.25
Miscellaneous	22,514.22
Plumbing material	2,467.64
Lamps, etc	8,289.41
Stationery, office fixtures, etc	30,745.15
Miscellaneous light hardware	49,315.46
Electrical material	46,580.49
Wagons	1,552.43
Alcohol	2,836.30
Equipment supplies	3,919.53
Air-brake material	185.64
Cargo trucks	970.75
Trucks	2,550.00
Leather and belting	1,177.05
Air compressor	3,738.50
Pig iron	468.75
Metals	672.72
Pneumatic tools	1,053.06
Foundry supplies	1,837.25
Boilers	5,697.25
Total	1,035,174.15

Mr. ANDERSON (referring to the fourth item in the above statement). "Freight on coal"—I include that in that statement as an item to be charged to the Isthmus, you understand—$87,890.40.

That makes a total of $1,035,174.15. Those are what we call material stores, supplies other than those intended for the commissary department. The commissary supplies I have kept separately.

The commissary supplies amounted to, in food stuffs, $224,155.36; other materials, $154,694.06; making a total of $378,849.42.

Senator MORGAN. Was all of this purchased for the railroad company?

Mr. ANDERSON. For the railroad company; yes, sir.

Senator TALIAFERRO. You bought those locomotives on bids?

Mr. ANDERSON. Oh, yes, sir.

Senator TALIAFERRO. Did you take the lowest bid on those?

Mr. ANDERSON. I did not buy the locomotives. They were bought while I was not with the Panama Railroad Company.

Senator TALIAFERRO. What does that miscellaneous item, as a rule, represent—$22,000?

Mr. ANDERSON. It is a whole lot of things; like waste and special things.

Senator TALIAFERRO. Have you not an item of waste in there?

Mr. ANDERSON. I do not remember. It may be there. It is made up of small things, you know, that would be hard to classify. The subdivisions would be innumerable if we did classify them.

Senator MORGAN. You can make a similar statement for the purchases that you made for the Isthmian Canal Commission during this same period?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. You were acting for that Commission during all of this year?

Mr. ANDERSON. Yes, sir; yes, sir.

Senator MORGAN. I want to get that statement. Can you furnish it now?

Mr. ANDERSON. No, sir; I can not. I did not prepare that. I had no idea you wanted me in connection with that.

Senator MORGAN. Just make a memorandum of it, then. Will you make a statement just like that?

Mr. ANDERSON. Similar to that?

Senator MORGAN. Yes.

Mr. ANDERSON. Covering that same period?

Senator MORGAN. Yes; covering this same period, which is for the year 1905.

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Beginning in January and ending on December 31.

Mr. ANDERSON. I could not give that statement beginning in January, Senator, because I was not appointed until some time in February.

Senator MORGAN. From the time you were appointed, then.

Mr. ANDERSON. Yes, sir.

Senator MORGAN. That means after the offices were consolidated?

Mr. ANDERSON. After they were consolidated?

Senator MORGAN. Yes.

Mr. ANDERSON. They were not consolidated until about June.

Senator MORGAN. Oh. But you were acting from February under an appointment from somebody for the Isthmian Canal Commission?

Mr. ANDERSON. No, sir.

Senator MORGAN. As purchasing agent?

Mr. ANDERSON. Oh, yes; but from February until June I was not acting for the Panama Railroad.

Senator MORGAN. But you were acting for the Canal Commission?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Now, I want that statement to cover the whole of this period of time.

Mr. ANDERSON. All right, sir.

Senator MORGAN. Including all your purchases for the Panama Canal—I will call it the Isthmian Canal Commission.

I want to go through some of these items and ask you something about them. First, I will get you to state what you do in regard to making a purchase. First, you get a requisition?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. On this schedule here, from the railroad company?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Who makes that requisition?

Mr. ANDERSON. The requisition is prepared by the general storekeeper and approved by the superintendent or the general manager.

Senator TALIAFERRO. On the Isthmus?

Mr. ANDERSON. On the Isthmus; yes, sir.

Senator MORGAN. Does not this include purchases you made for the railroad company in New York, too?

Mr. ANDERSON. No, sir.

Senator MORGAN. These are Isthmian supplies entirely?

Mr. ANDERSON. Those are Isthmian supplies; yes, sir.

Senator MORGAN. Then, in addition to that, you have another list for the New York supplies?

Mr. ANDERSON. I did not prepare that list, because the only supplies we purchase in New York are for the offices and for the steamship line, for the fleet of steamers.

Senator MORGAN. They are all made in New York?

Mr. ANDERSON. They are made in New York.

Senator MORGAN. So that you have two departments that make requisitions; one is on the Isthmus and one is in New York?

Mr. ANDERSON. One is in New York.

Senator MORGAN. But the requisitions that are made on account of the railroad company, ordered from the Isthmus, pass through the office at New York?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. And they are sent to you?

Mr. ANDERSON. They are sent to Mr. Ross, and Mr. Ross sends them to me.

Senator TALIAFERRO. The canal purchases?

Mr. ANDERSON. No; the Panama Railroad purchases also.

Senator MORGAN. They go to Mr. Ross?

Mr. ANDERSON. Yes, sir; and he sends them to me.

Senator TALIAFERRO. Is he the purchasing agent for the Panama Railroad Company?

Mr. ANDERSON. Yes, sir; he is. He is the general purchasing officer of the Panama Railroad and of the Isthmian Canal Commission.

Senator MORGAN. So this list here that you handed us now came from the Isthmus?

Mr. ANDERSON. It came from the Isthmus.

Senator MORGAN. And that passed through Ross's hands?

Mr. ANDERSON. It came to Mr. Ross, and he approved it and sent it to me.

Senator MORGAN. He approved it and sent it to you?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. You therefore had no consultation with the general deputy, president, or manager, Mr. Drake, about this list?

Mr. ANDERSON. No, sir.

Senator MORGAN. This was all confided to you in New York?

Mr. ANDERSON. Yes, sir.

Senator TALIAFERRO. You consult with Mr. Drake in large transactions, whether they are for the railway company or the Commission, do you not?

Mr. ANDERSON. I do not.

Senator TALIAFERRO. You do not?

Mr. ANDERSON. I never consult with Mr. Drake about the Isthmian Canal Commission. I am absolutely independent of Mr. Drake in so far as the Isthmian Canal Commission is concerned.

Senator TALIAFERRO. I understand that, Mr. Anderson; but it seems to me that that would be a natural thing.

Mr. ANDERSON. No; I never do consult with him. I never started that.

Senator TALIAFERRO. You do not care to burden him with the canal affairs?

Mr. ANDERSON. That is the idea.

Senator MORGAN. These particular requisitions on this list come from the Isthmus and are made by what officer there?

Mr. ANDERSON. Either by the commissary or the general storekeeper.

Senator MORGAN. This particular list?

Mr. ANDERSON. Yes; those lists—either by the general storekeeper or by the commissary.

Senator MORGAN. Well, which one?

Mr. ANDERSON. It depends upon what it is. There is some commissary material there, Senator, and also some material stores.

Senator MORGAN. So that the requisitions came from two sources?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. On this list?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. And they both passed through the hands of Mr. Ross?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Because they had originated in the Isthmus?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. That was the reason for it?

Mr. ANDERSON. Why, no; he is the general purchasing officer, and they were sent to him of course.

Senator MORGAN. I say, but he does not purchase anything for the railroad company in New York?

Mr. ANDERSON. Not in New York, but he directs about the larger items. On some of the requisitions received from the Isthmus there will be items on which Mr. Ross requests that I send him a record of all transactions had about the bids and everything of that kind. I pass to him all documents for final action on some of the items called for in the requisitions.

Senator MORGAN. I am speaking about this particular table. I want to confine myself to this, because if we get outside of it we are in a maze that we will never escape from. So far as I am concerned, I have not the intelligence to do it.

Mr. ANDERSON. I will try to confine myself to that, if I can.

Senator MORGAN. These particular requisitions were sent to Mr. Ross. He approved the requisitions and sent them to you?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. And you made the purchases?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. When you got them what did you next do—after you got the requisitions?

Mr. ANDERSON. We would prepare an advertisement calling for proposals, and send out circular letters of inquiry to a list of concerns that we have on file in the office, asking for bids to be opened at a certain time, and select the bid which we considered the most advantageous.

Senator MORGAN. To whom?

Mr. ANDERSON. The most advantageous.

Senator MORGAN. But to whom?

Mr. ANDERSON. To the Panama Railroad Company.

Senator MORGAN. Those biddings were advertised in the newspapers?

Mr. ANDERSON. In the newspapers.

Senator MORGAN. Sometimes not?

Mr. ANDERSON. All those were, except the commissary stores. All the commissary stores were not advertised for.

Senator MORGAN. You had a house in New York that you purchased your commissary stores from?

Mr. ANDERSON. Oh, many, many of them.

Senator MORGAN. Many of them. Why did you not advertise for commissary stores?

Mr. ANDERSON. We did, except for such items as were specifically called for.

Senator MORGAN. Then the biddings were sent in in accordance with the specifications and the advertisements?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Who drew the specifications?

Mr. ANDERSON. We drew the specifications in our office.

Senator MORGAN. In your office?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. So that when the requisitions were sent up they were not accompanied with the specifications?

Mr. ANDERSON. Sometimes they were. Sometimes the specifications were prepared at the Isthmus.

Senator MORGAN. But most usually in your office?

Mr. ANDERSON. If they were indefinite, they were prepared by the inspecting engineer.

Senator MORGAN. Prepared by the inspecting engineer?

Mr. ANDERSON. When I say "our office," I mean the inspecting engineer's office.

Senator MORGAN. Yes.

Mr. ANDERSON. I mean the New York office, you know, Senator.

Senator MORGAN. Yes. He is a railroad officer?

Mr. ANDERSON. And an Isthmian Canal Commission officer.

Senator MORGAN. Both?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. His office was consolidated, like the other?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. By the order of whom?

Mr. ANDERSON. Mr. Ross.

Senator MORGAN. Then, after opening the bids, what did you do?

Mr. ANDERSON. I had my chief clerk prepare what we call an abstract of award—a résumé showing the different tenders received, the prices, and the time of delivery, which was submitted to me, and I would determine where the order should be placed.

Senator MORGAN. You would select the party with whom the contract was to be made?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. What did you next do?

Mr. ANDERSON. I placed the order for the material.

Senator MORGAN. And it was accepted by the party that had put in the bid?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. In writing?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. The price ascertained?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. The date of delivery?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. And then it was shipped from New York to the Isthmus at whose expense?

Mr. ANDERSON. It was bought f. o. b. New York generally, and it would be forwarded from New York by the Panama Railroad Steamship Line. I would arrange for the forwarding of it.

Senator MORGAN. Was it a part of the understanding in these biddings on this list here that the goods were to be shipped by the steamship line?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. In all cases?

Mr. ANDERSON. No, sir; except where we bought it at a price delivered at the Isthmus.

Senator MORGAN. You had the option to do either?

Mr. ANDERSON. The only material we bought c. i. f. the Isthmus was such as was shipped in cargo lots. Everything less than that we purchased f. o. b. New York, and forwarded by the Panama Railroad and Steamship Line.

Senator TALIAFERRO. What do you mean by "c. i. f.," Mr. Anderson?

Mr. ANDERSON. That is a term that is used, meaning, literally, "cost, insurance, and freight," included in the price delivered at final destination.

Senator MORGAN. That is all you had to do with it?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. You made no personal inspection of the goods?

Mr. ANDERSON. No, sir.

Senator MORGAN. And your action really was in getting out the biddings, the specifications of the requisitions, and in locating the purchaser?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. And designating the purchaser?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. That is all you had to do with it?

Mr. ANDERSON. Making purchases of the material.

Senator MORGAN. Of course, you made the purchase by accepting the proposition—the bid—of somebody?

Mr. ANDERSON. Exactly.

Senator MORGAN. That was done in writing?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Then you did not have to see the people at all that you made the purchases from?

Mr. ANDERSON. Oh, frequently we did, you know, so that there would be no possibility of misinterpreting specifications, and giving more specific information as to what was required.

Senator MORGAN. After you had made an acceptance of a bid, after advertisement, did you refer that to anybody for ratification?

Mr. ANDERSON. No, sir.

Senator MORGAN. That was all left to you?

Mr. ANDERSON. Yes, sir; except that in the case of purchase of large quantities of material we prepare a regular form of contract; we enter into a regular contract. If the material is going to be delivered over a lengthy period of time, say, like three months or sixty days, we have a regular contract prepared covering those commodities.

Senator MORGAN. When you have a regular contract prepared, to whom do you submit that contract?

Mr. ANDERSON. To the general counsel of the company, and it is prepared by him.

Senator MORGAN. Who is he?

Mr. ANDERSON. The firm of Sullivan & Cromwell.

Senator MORGAN. And they pass upon it?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. They formulate the contract, and it is signed and——

Mr. ANDERSON. And executed.

Senator MORGAN. Yes. There is one item here of "electrical material, $46,580.49." Have you an idea what that material was—the general character of it?

Mr. ANDERSON. Yes, sir. There have been extensive improvements in the telephone service at the Isthmus and in our electric plants at the Isthmus, at La Boca, Colon, etc., requiring the purchase of a large quantity of electrical material—wire and transformers, wattmeters, and a miscellaneous lot of electrical supplies.

Senator MORGAN. Is that the electrical establishment that is situated in the city of Colon?

Mr. ANDERSON. I do not know of any establishment there at Colon.

Senator MORGAN. You do not know where the headquarters of the electrical establishment there may be?

Mr. ANDERSON. No, sir.

Senator MORGAN. I have never heard of any except in Colon. I see an item here of $69,222.15 for lumber, etc.

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Do you recollect where that lumber was purchased?

Mr. ANDERSON. That lumber was purchased either f. o. b. New Orleans or c. i. f. the Isthmus, or, rather, both ways. The lumber is purchased through the assistant purchasing agent at New Orleans.

Senator MORGAN. Is any of it purchased on the western coast?

Mr. ANDERSON. I have never purchased lumber on the western coast.

Senator MORGAN. You have not gone farther than New Orleans?

Mr. ANDERSON. No, sir. Well, I could not, because the specification called for yellow pine.

Senator MORGAN. Therefore you had to go to New Orleans?

Mr. ANDERSON. Yes, sir; I did not necessarily have to go to New Orleans, but it had to be bought either on the Atlantic or Gulf coast.

Senator MORGAN. Then you had a branch office in New Orleans which was under your charge, under your direction?

Mr. ANDERSON. There is an assistant purchasing agent at New Orleans of the Isthmian Canal Commission, and I avail of that office to make purchases there of material for the Panama Railroad.

Senator MORGAN. That is, the bidding that was made for yellow-pine lumber at New Orleans was turned over to this purchasing agent at New Orleans?

Mr. ANDERSON. It was done through the purchasing agent there at New Orleans; yes, sir.

Senator MORGAN. You never saw the lumber?

Mr. ANDERSON. I never saw the lumber; no, sir.

Senator TALIAFERRO. Does that statement cover all the purchases by the purchasing agent at New Orleans?

Mr. ANDERSON. Yes, sir; it does.

Senator MORGAN. I see here a charge of $28,569.24 for freight on lumber.

Mr. ANDERSON. Yes, sir. That was for lumber that was purchased f. o. b. at either New Orleans or on the Atlantic seaboard, the for-

warding of which was done by me for account of the Panama Railroad—the amount we had to pay for its transportation from New Orleans to the Isthmus.

Senator MORGAN. Do you remember what kind of lumber that was that this freight bill was for?

Mr. ANDERSON. It was either untreated yellow pine or creosoted pine; some cypress cross-ties and some creosoted switch ties and piling.

Senator MORGAN. The purchasing agent at New Orleans did the purchasing?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. And the inspecting?

Mr. ANDERSON. No; we have an inspector down there who inspects lumber and that class of material.

Senator TALIAFERRO. How is he paid, Mr. Anderson?

Mr. ANDERSON. He is paid upon the amount of work he does—so much per thousand feet, board measurement, plus any traveling expenses incurred from his home to the mills.

Senator TALIAFERRO. He is not regularly in the service of the Government?

Mr. ANDERSON. He is our regular inspector, but we pay him on that basis.

Senator TALIAFERRO. I suppose you pay him the usual price, the market price?

Mr. ANDERSON. Thirty cents a thousand, I think it is; yes, sir.

Senator MORGAN. Do you know of any reason, either economical or commercial, why you should order the purchase of this lumber through an agent in New Orleans without ever seeing it, or seeing the man, or anything about it?

Mr. ANDERSON. That is quite customary, Senator. Lumber is purchased under standard specifications, with which all inspectors are familiar, and it is accepted only upon report of our inspectors.

Senator MORGAN. You have to keep an office in New Orleans; you have to keep an inspector there and you have to keep a purchasing agent there?

Mr. ANDERSON. That purchasing agent is really the purchasing agent of the Isthmian Canal Commission.

Senator MORGAN. When I say "you," I mean the establishment down there.

Mr. ANDERSON. Yes, sir.

Senator MORGAN. It is mixed up so that I can not separate one from the other in my mind at all.

Mr. ANDERSON. It is very easy for me to do it.

Senator MORGAN. You have to have those officers down there?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. And yet the specifications and requisitions come to you in New York, through Ross in Washington?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. And then you pass upon them, and then you send them down to New Orleans?

Mr. ANDERSON. The only thing I send to New Orleans for is for products that are tributary to that country—lumber and things of that kind and a few other things.

Senator MORGAN. I understand that. Why did you not reach over to the western coast and take it all in while you were at it?

Mr. ANDERSON. They called for yellow pine, and I could not get yellow pine over there, sir.

Senator Morgan. You could not get yellow pine?

Mr. ANDERSON. Not on the other side.

Senator MORGAN. Suppose you wanted to buy redwood or Oregon cedar?

Mr. ANDERSON. I would probably send out to the purchasing agent at San Francisco.

Senator MORGAN. That is what I want to get at. Your power was coextensive with the whole United States?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. And beyond that, I notice you have been buying cement; was that from American companies or from foreign companies?

Mr. ANDERSON. Both.

Senator MORGAN. Both?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. So that your power in your office at New York extended all over the world?

Mr. ANDERSON. My instructions are to make purchases according to specifications, wherever I can do it the most advantageously.

Senator MORGAN. Yes. You had a great deal of labor in connection with all of this, to find out the different markets and the different places where you could get the best material and the most reliable producers?

Mr. ANDERSON. Well, I have been doing it for a good many years, and am more or less familiar with it, you know.

Senator MORGAN. Yes. So that Mr. Ross did not give any personal attention to this?

Mr. ANDERSON. He examined the requisitions before they were sent to me.

Senator MORGAN. That is all he did?

Mr. ANDERSON. Yes, sir. I attended to the details.

Senator MORGAN. He examined the requisitions sent up from the Isthmus; he approved them?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. And sent them to you?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. And you had to do the work?

Mr. ANDERSON. Well, I did my share of it.

Senator MORGAN. Was anybody associated with you in that part of your duties?

Mr. ANDERSON. How do you mean? I had an office force up there.

Senator MORGAN. Oh, yes; you have people under you, but I am talking about people associated with you in your duties. Did anybody divide any of your duties as purchasing agent in New York with you?

Mr. ANDERSON. No, sir; they did not.

Senator MORGAN. So you had the control of the whole situation all over the United States if you chose to exercise it?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. We might very well, then, call you the chief purchasing agent both of the railroad company and of the Isthmian Canal Commission in the United States?

Mr. ANDERSON. Oh, I do not see how you figure that out.

Senator MORGAN. I do not see how you can figure anything else out of it. Your authority extends all over the world.

Mr. ANDERSON. Of course the larger quantities of material required by the Isthmian Canal Commission are purchased by the general purchasing officer here in Washington.

Senator MORGAN. You have a purchasing officer here in Washington?

Mr. ANDERSON. The Isthmian Canal Commission has; certainly.

Senator MORGAN. You mean Mr. Ross?

Mr. ANDERSON. Mr. Ross.

Senator MORGAN. Why is it necessary for Mr. Ross, if he is purchasing agent in Washington (and his duty is probably a little broader than yours, because he gets a bigger salary and has bigger power) to send orders to you in New York to purchase lumber at New Orleans?

Mr. ANDERSON. I will tell you. The system of forwarding material to the Isthmus and of charging the cost of it to the proper department down there is rather complex, in that there are a whole lot of corrections and supplemental documents required for use with our auditing department, and it would not do to have that work duplicated at Washington or at New Orleans. It is necessary, in order to have the matter straightened out, to have that done by one officer. It would not do to have a duplicate set of books or a duplicate set of accounts in Washington or New Orleans for the Panama Railroad work, Senator. That was always done by myself.

Senator MORGAN. I am talking about the canal work now.

Mr. ANDERSON. About the canal work? Oh, I thought you meant the Panama Railroad.

Senator MORGAN. No; I am trying to keep them apart. It is very difficult to do, because they are so closely intermarried that I do not see how any separation, even from bed and board, can be gotten up between them at all. I am trying to keep up a separation between the railroad and the canal, and you have said that all of this list was for the canal.

Mr. ANDERSON. All of that list is for the Panama Railroad.

Senator MORGAN. The Panama Railroad, I mean.

Mr. ANDERSON. Yes, sir.

Senator MORGAN. On the Isthmus?

Mr. ANDERSON. On the Isthmus.

Senator MORGAN. And not in New York?

Mr. ANDERSON. And not in New York.

Senator MORGAN. That is what I meant to say. You have a similar list, or can make us a similar list, for the purchases that were made for the Canal Commission covering the same period of time?

Mr. ANDERSON. Yes, sir; I have a memorandum here to prepare that for the Senator.

Senator MORGAN. You have a memorandum here that you can prepare it?

Mr. ANDERSON. I will have it prepared for you.

Senator MORGAN. Very good. You see, there is the difficulty of getting along without papers. Then, if there is so much danger of duplication of orders——

Mr. ANDERSON. Pardon me, Senator, there is no danger of duplication of orders.

Senator MORGAN. I thought you said there was just now?

Mr. ANDERSON. I did not mean that.

Senator MORGAN. For purchases? The stenographer had better read back and let us get the record straight about that. I misunderstood you, if you did not say so.

(The stenographer read from the preceding testimony of the witness, as follows:)

"It is necessary, in order to have the matter straightened out, to have that done by one officer. It would not do to have a duplicate set of books or a duplicate set of accounts in Washington or New Orleans for the Panama Railroad work, Senator. That was always done by myself."

Senator MORGAN. That is what I meant.

Mr. ANDERSON. We have a very large correspondence with the Isthmus, you know, in regard to the various items called for, and in order to know "where we are at" that has to be centralized.

Senator MORGAN. I want to get at this point: I want to know why it is necessary to have this business transacted in New York instead of Washington.

Mr. ANDERSON. You mean the Isthmian Canal Commission business?

Senator MORGAN. Yes; whether for the railroad or for the canal.

Mr. ANDERSON. Well, I think New York offers the best market for the purchase of nearly all classes of material. It can be secured there more promptly and at a more advantageous figure than elsewhere.

Senator MORGAN. It is not any market at all for pine lumber, is it?

Mr. ANDERSON. Not for pine lumber.

Senator MORGAN. That is the item I am examining you about. Why was it necessary in that case that the order should be sent to you, and that you should order the man in New Orleans to make the purchase?

Mr. ANDERSON. That was with the view, I suppose, of having one man in charge of the Panama Railroad purchasing, in charge of the details, which was myself. It is necessary for me to keep the Isthmus advised as to the status of the various orders. All of that comes direct to me, and it would complicate accounting and everything else if correspondence about those things was had by Isthmus officials or our accounting officers with the agents at New Orleans and Washington. It simplifies matters very much to have that done in one office, where it always has been, in New York.

Senator MORGAN. It appears to be necessary if you undertake to keep up two separate establishments, one in New York and one in Washington, the one in Washington operating for the Panama Canal Commission specifically, and the other operating separately for the Panama Railroad; and that is the very thing I am trying to get at. I want to see whether there is any necessity for keeping up these two establishments.

Mr. ANDERSON. All the details of all transactions of the Isthmian Canal Commission, no matter where they may be had, are kept in the Washington office; and all the details required of the Panama Railroad purchasing department are kept in the New York office.

Senator MORGAN. That is what I understand.

Mr. ANDERSON. New York is the purchasing office of the Panama Railroad Company purchasing department, and Washington of the Isthmian Canal Commission.

Senator MORGAN. Yes. If there was no necessity for having a New York office to run the Panama Railroad, then there would be no necessity for this duplication of accounts?

Mr. ANDERSON. Well, I think there is necessity for both of them in New York.

Senator MORGAN. I say, if there was no necessity for having an office in New York for running the Panama Railroad, there would be no necessity for having any duplication of transactions, having one set of books kept in New York and another set of books kept in Washington and on the Isthmus?

Mr. ANDERSON. I can not conceive of the possibility of not having an office in New York for the Panama Railroad, especially in the purchasing and forwarding of supplies.

Senator MORGAN. Well, I know you do not conceive it, but I do. I think it is quite within the reach of the power of Congress to fix it just that way, and that is just exactly what I want to do.

Mr. ANDERSON. All right; but the purchasing agent in New York has so much detail work to do, and in the forwarding of material he has to keep in touch with the traffic department of that company in delivering and certifying and the receipting for material, so that it will always be necessary to have somebody in New York to attend to that part of the business.

Senator MORGAN. If you should sell all your steamers that ply between New York and Panama, and locate the railroad office in Panama, there would be no necessity, then, for a New York office?

Mr. ANDERSON. Even then there would be necessity for a purchasing agent in New York.

Senator MORGAN. Why?

Mr. ANDERSON. To be in charge of the forwarding of material and advising the Isthmus what material had been forwarded, to send forward the necessary invoices, so that they could determine the cost of it, and fill requisitions received by cable every few days.

Senator MORGAN. Why could not that be done by the purchasing agent at Washington as well as in New York?

Mr. ANDERSON. Because the actual forwarding is done at New York, and that is the base of supplies.

Senator MORGAN. Well, I understand that the New Yorkers want to make it the base of supplies, but perhaps the Congress of the United States might want to change it and make Washington the base of supplies.

Mr. ANDERSON. They do not have them in Washington.

Senator MORGAN. Can we not have them?

Mr. ANDERSON. I dare say, Senator.

Senator MORGAN. I understand that is the whole object of keeping up this sham in New York.

Mr. ANDERSON. I do not know anything about that.

Senator MORGAN (continuing). When the United States owns everything and everybody connected with it in an official way.

Mr. ANDERSON. I guess that is right.

Senator TALIAFERRO. Did you ever buy any redwood in New York?

Mr. ANDERSON. I tried, once.

Senator TALIAFERRO. Did you ever buy any redwood in New York?

Mr. ANDERSON. No, sir.

Senator TALIAFERRO. Did you ever buy any yellow pine in New York?

Mr. ANDERSON. I did.

Senator TALIAFERRO. In what quantity?

Mr. ANDERSON. It was purchased in small quantity—ten or fifteen or twenty thousand feet. We would get a cable requiring immediate shipment of some yellow pine for a specific purpose and find it necessary to forward it by our own steamer from New York.

Senator TALIAFERRO. You never bought a cargo of yellow pine in New York?

Mr. ANDERSON. No, sir.

Senator ANKENY. Where was it cut, Mr. Anderson?

Mr. ANDERSON. I think it was Georgia pine; sent up from Savannah, in all probability.

Senator MORGAN. I want to find out, if I can, and I think you can tell me approximately, if not accurately: First, the title of your office in New York?

Mr. ANDERSON. Assistant purchasing agent of the Isthmian Canal Commission and assistant purchasing agent of the Panama Railroad Company and the Panama Railroad Steamship Line.

Senator MORGAN. Where are your quarters?

Mr. ANDERSON. 24 State street.

Senator MORGAN. Separate from the railroad quarters?

Mr. ANDERSON. On the same floor, in the same building.

Senator MORGAN. Separate rooms?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. How many men are in your employment, including the inspectors?

Mr. ANDERSON. The inspectors are not in my employ.

Senator MORGAN. Well, how many men are in your employment?

Mr. ANDERSON. Fourteen.

Senator MORGAN. What is about the annual expense of your office, including all salaries?

Mr. ANDERSON. About $11,000.

Senator TALIAFERRO. That does not include your rent?

Mr. ANDERSON. No, sir.

Senator MORGAN. Does that include your salary also?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Take the inspectors. How many inspectors are there?

Mr. ANDERSON. Well, it varies with the quantity of work they have on hand. They occasionally find it necessary to employ special talent to inspect certain classes of material. It depends upon the amount and class of material that is to be inspected.

Senator MORGAN. You employ them by the day's work?

Mr. ANDERSON. Well, I do not employ them at all.

Senator MORGAN. Well, whoever does employ them?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. They are employed by the day's work?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. How much a day?

Mr. ANDERSON. It depends upon the class of men you employ. It varies.

Senator MORGAN. Between what figures?

Mr. ANDERSON. It varies from 40 cents an hour to $5 a day.

Senator MORGAN. Well, they are in pretty constant employment, are they not?

Mr. ANDERSON. Some of them are employed only for one day.

Senator MORGAN. Yes. It is not an organized corps?

Mr. ANDERSON. It is not a permanent corps; no, sir.

Senator MORGAN. But there are certain men that you can call upon at any time for the service?

Mr. ANDERSON. Yes, sir; the inspecting engineer has a permanent office staff.

Senator MORGAN. What is about the annual expense of that office?

Mr. ANDERSON. I do not know.

Senator MORGAN. You keep no record of it?

Mr. ANDERSON. No, sir; it is not in my jurisdiction.

Senator MORGAN. Whose jurisdiction is it in?

Mr. ANDERSON. Mr. Ross's.

Senator MORGAN. Mr. Ross has charge of that?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. These inspectors are employed under his authority?

Mr. ANDERSON. Yes, sir.

Senator TALIAFERRO. Why do you speak of the head of this inspecting bureau as the inspecting engineer?

Mr. ANDERSON. That is his title.

Senator MORGAN. You have got some other employments there, organized or not, in regard to receiving and forwarding, have you not?

Mr. ANDERSON. I included those in the number stated before.

Senator MORGAN. In your office?

Mr. ANDERSON. Yes, sir; it included the employees at the warehouse. I have one warehouseman there and a boy.

Senator MORGAN. What other officers there are connected with the purchase, inspection, or shipping of the things that are on this list?

Mr. ANDERSON. None in the purchasing department.

Senator MORGAN. None in the purchasing department?

Mr. ANDERSON. No, sir.

Senator MORGAN. But you have a traffic manager?

Mr. ANDERSON. Well, we have a traffic manager of the Panama Railroad Company.

Senator MORGAN. Yes; he has to do with this, does he not?

Mr. ANDERSON. All he has to do is to issue bills of lading, accepting material that is delivered to him.

Senator MORGAN. I see. He has to issue bills of lading for all of these items that I have mentioned?

Mr. ANDERSON. Yes, sir; he has to issue bills of lading for all material that is bought f. o. b. and delivered to that line.

Senator MORGAN. How many people are there in his service?

Mr. ANDERSON. I have no idea.

Senator MORGAN. Many or few?

Mr. ANDERSON. The traffic department is rather a large department.

Senator MORGAN. It has very extensive business over the world, has it not?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. And this part of it comes within the purview of his services?

Mr. ANDERSON. He has nothing to do with the supplies except only to accept delivery of them; that is all.

Senator MORGAN. He designates the ships and gives bills of lading for these goods, I will call them?

Mr. ANDERSON. Yes, sir.

Senator MORGAN (continuing). When they leave New York and go to the Isthmus?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. When they reach the Isthmus, I suppose they are delivered to the Panama Railroad Company?

Mr. ANDERSON. Yes, sir; to the Panama Railroad Company.

Senator MORGAN. And the traffic agent makes all contracts for freights between New York and Colon?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. You have nothing to do with that?

Mr. ANDERSON. Well, I ascertain at what rates they will carry the respective commodities, of course.

Senator MORGAN. Ascertain from whom?

Mr. ANDERSON. From the traffic department of the Panama Railroad Company.

Senator MORGAN. They report to you?

Mr. ANDERSON. Well, I find out what the rates are.

Senator MORGAN. Do you control them in any extent?

Mr. ANDERSON. No, sir.

Senator MORGAN. Of what interest is it to you to find out, if you do not control them?

Mr. ANDERSON. I want to know what the cost of the material will be delivered at the Isthmus.

Senator MORGAN. Oh!

Mr. ANDERSON. I want to know what is the cost of handling it from New York to Colon.

Senator MORGAN. So the cost of the freights down there is added to the cost of the material?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. The men that sell the goods to you, therefore, have no expense in regard to it except delivering it on board the ship?

Mr. ANDERSON. That is all.

Senator MORGAN. Or in the warehouse?

Mr. ANDERSON. That is all; if the material is bought f. o. b. New York.

Senator MORGAN. Well, if it is elsewhere a different arrangement takes place?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Where was this pig iron bought?

Mr. ANDERSON. It was bought in New York.

Senator MORGAN. Is that a good market for pig iron?

Mr. ANDERSON. Well, I do not see that we could buy it elsewhere, unless it was bought from a southern port and shipped from New Orleans.

Senator MORGAN. Would there be any objection to that?

Mr. ANDERSON. None whatever.

Senator MORGAN. Then why did you not do it?

Mr. ANDERSON. I do not know whether I bought that pig iron or not; but the iron that they called for has to have a special analysis.

Senator MORGAN. I see the item of coal here—$186,657.33. Is New York a proper or a good market for coal?

Mr. ANDERSON. That coal was not shipped from New York.

Senator MORGAN. Where was it shipped from?

Mr. ANDERSON. I think that coal was shipped from Norfolk.

Senator MORGAN. Did you make a contract for it?

Mr. ANDERSON. No, sir; I never buy any coal.

Senator MORGAN. You never do?

Mr. ANDERSON. I will qualify that. I have purchased small quantities of lump anthracite coal, required for foundry purposes, for the cupola and foundries; but that only amounts to 10 or 15 tons a year.

Senator MORGAN. That is, the foundries on the Isthmus?

Mr. ANDERSON. Yes; I never bought any bituminous or semibituminous coal.

Senator MORGAN. Who controls this coal purchased?

Mr. ANDERSON. The purchase of coal is made by the secretary's office.

Senator MORGAN. The secretary of what?

Mr. ANDERSON. Mr. Drake, of the Panama Railroad.

Senator MORGAN. Mr. Drake? I call him the deputy president, or assistant president.

Mr. ANDERSON. Assistant to the president; that is his new title. I always refer to him as secretary, because he occupied that position for so many years.

Senator MORGAN. All the coal that is purchased on account of the railroad in Panama is bought by the assistant to the president, or under his direction?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. And you have nothing to do with that?

Mr. ANDERSON. Nothing at all.

Senator MORGAN. You have no knowledge of how he buys?

Mr. ANDERSON. Only to this extent: We are now in the market for a quantity of coal, and I prepared the circular asking for bids. I did that under instructions from Mr. Drake.

Senator MORGAN. Yes.

Mr. ANDERSON. But the bids are not to be opened by me, but are to be opened by him.

Senator MORGAN. Do you know of any reason why that item of purchasing coal was taken out of your jurisdiction and put into the jurisdiction of the assistant president of the Panama Railroad?

Mr. ANDERSON. The purchase of coal was never made by the purchasing department of the Panama Railroad Company. The purchasing agent never had charge of that commodity.

Senator MORGAN. Of the Panama Railroad Company?

Mr. ANDERSON. Yes, sir.
Senator MORGAN. Who made it heretofore?
Mr. ANDERSON. Mr. Drake.
Senator MORGAN. It has all been in his hands?
Mr. ANDERSON. All.
Senator MORGAN. So that there was not any change made in that arrangement, but it was just left to stand as it has been beforehand, after the United States got possession of the railroad?
Mr. ANDERSON. Yes, sir; there was no change made then.
Senator MORGAN. I say there was no change made.
Mr. ANDERSON. No, sir.
Senator MORGAN. It had been in the hands of Mr. Drake before?
Mr. ANDERSON. Yes, sir.
Senator MORGAN. And it remained in his hands, and is in his hands now?
Mr. ANDERSON. Yes, sir.
Senator MORGAN. And Mr. Drake is supervised by whom in this matter?
Mr. ANDERSON. I do not know. I suppose he reports to the president of the Panama Railroad.
Senator MORGAN. All the coal that is used in Panama by the Isthmian Canal Commission is sold to it by the railroad. Do you know that?
Mr. ANDERSON. I understand that to be the case.
Senator MORGAN. You do not know it personally?
Mr. ANDERSON. I do not know; no, sir.
Senator MORGAN. And also coal is sold to the people?
Mr. ANDERSON. Yes, sir.
Senator MORGAN. That is all done through Mr. Drake as real manager and controller of the railroad?
Mr. ANDERSON. He attends to the purchase of the coal; yes, sir.
Senator MORGAN. Well, he is the real manager and controller of that railroad, is he not?
Mr. ANDERSON. He is the executive officer of that company in New York in the absence of the president.
Senator MORGAN. The president never is there?
Mr. ANDERSON. I think he is.
Senator MORGAN. On what occasions?
Mr. ANDERSON. I do not know. I have seen him there.
Senator MORGAN. At the annual meetings of the board of directors?
Mr. ANDERSON. I do not know about that.
Senator MORGAN. Have you ever seen him there at the meetings of the executive committee?
Mr. ANDERSON. That is not my end of the building. I do not know anything about that part of the business, you know, Senator.
Senator MORGAN. You do not know?
Mr. ANDERSON. No, sir.
Senator MORGAN. But you remember to have seen him there when the executive committee was in session?
Mr. ANDERSON. I have seen him a number of times in the building. He has been in my office.
Senator MORGAN. So that the purchase of coal is entirely separate from all the other purchases in reference to the canal and in ref-

erence to the railroad, and taken out of the hands of the purchasing officers appointed for the Government of the United States and put in the hands or kept in the hands of the officers of the railroad?

Mr. ANDERSON. Well, all I know about that is that I am getting out a proposal here now for a lot of coal under instructions from Mr. Drake. I do not know that the Isthmian Canal Commission is buying any coal.

Senator MORGAN. I suppose you know that they use a great deal of it in running those shovels and steamers and so on?

Mr. ANDERSON. Undoubtedly.

Senator MORGAN. In addition to this purchase of coal from the railroad company, they have contracts also for furnishing coal to steamers that come on the other side, up the Pacific, have they not?

Mr. ANDERSON. Yes, sir; we have always done that.

Senator MORGAN. You always do that business?

The CHAIRMAN. Yes, sir.

Senator MORGAN. And that is kept in operation and left in the hands of Mr. Drake?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. You do not know anything about the biddings that have been sent in by different colliers or producers of coal—competitive biddings for the supply of coal?

Mr. ANDERSON. I know that our circular for our requirements for the next year specifies that bids were to be opened on April 4, if I remember rightly; and because of the continued disturbed coal condition we postponed that until the 25th—yesterday. I do not know what bids have been received, if any. They would be sent to Mr. Drake, and not to my office.

Senator MORGAN. I notice an item of boilers here—$5,697.25. What kind of boilers were those?

Mr. ANDERSON. If I remember rightly, those were boilers for a tug at the Isthmus—two boilers—one boiler for a tug, and I think one was for a locomotive boiler.

Senator MORGAN. Did you buy those in New York?

Mr. ANDERSON. We bought those in Philadelphia.

Senator MORGAN. Philadelphia?

Mr. ANDERSON. From the concern which made the locomotives originally.

Senator MORGAN. Philadelphia is the best market for those, is it?

Mr. ANDERSON. It would be for that particular boiler.

Senator MORGAN. Yes. It was a certain boiler that you wanted—one pattern or patent?

Mr. ANDERSON. Yes, sir.

Senator MORGAN (reading): "Pneumatic tools, $1,053.06." Where did you buy those?

Mr. ANDERSON. In New York.

Senator MORGAN. In the city?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. They have supplies of those there?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. You have an item at the bottom there, other material under the head of commissary supplies, $154,694.06. Have you any idea what that was?

Mr. ANDERSON. Well, that is all material for our commissary department other than food stuffs; everything required by our employees down there in their homes, you know, and for their personal use; clothing and household effects, kitchen utensils, furniture, and everything required by our employees and the employees of the Isthmian Canal Commission.

Senator MORGAN. And the employees of the Isthmian Canal Commission?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. But I thought this related to the railroad entirely.

Mr. ANDERSON. Yes. Well, the commissary at the Isthmus is operated by the Panama Railroad.

Senator MORGAN. I understand that.

Mr. ANDERSON. But of course we sell our food stuffs and other materials to employees of the Isthmian Canal Commission as well.

Senator MORGAN. This purchase, then—"other material," etc.—is such things as you would sell to your own employees?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. For their home purposes and home uses, personal comfort, and so on?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. There is no requisition sent for that, is there?

Mr. ANDERSON. Yes, sir. We purchase nothing except on requisition.

Senator MORGAN. Who would make out the requisition for that?

Mr. ANDERSON. The commissary.

Senator MORGAN. And after he received them he would sell them to the employees of the company?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. Did you have them inspected also?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. By your inspectors?

Mr. ANDERSON. Yes, sir.

Senator MORGAN. "Food stuffs." I suppose that is the whole category of the bill of fare down there, whatever it is?

Mr. ANDERSON. Oh, everything imaginable—everything.

Senator MORGAN. You did not have all those inspected, did you?

Mr. ANDERSON. Not all of them. There was no necessity for having a lot of that stuff inspected.

Senator MORGAN. Probably not. So that the régime of inspection did not extend to food stuffs?

Mr. ANDERSON. Not to all food stuffs.

Senator MORGAN. Well, you seem to have been engaged in a very general partnership down there with the canal company, the employees of the railroad company, and all that, and all these purchases were finally and actually on account of the United States Government, were they not?

Mr. ANDERSON. They were for the Panama Railroad Company, Senator.

Senator MORGAN. Yes. If any debt was created by any purchasing agent that the assets of the railroad company or its income could not pay then the United States stood for it?

Mr. ANDERSON. Well, I never thought about that, of course.

Senator MORGAN. I do not suppose you did.

Mr. ANDERSON. No; I have had other things to think about.

Senator MORGAN. We have an unhappy faculty for neglecting Uncle Sam as we go along and taking care of everybody else.

Mr. ANDERSON. If you look over those items, there is enough there to worry a purchasing agent without thinking about that part of it.

Senator MORGAN. I should say so. But that is the part that we have to think of. We are trying to take care of the old man.

Mr. ANDERSON. Yes, sir.

Senator MORGAN. I think I have asked all the questions that I care to at this time.

Senator TALIAFERRO. You say that you have fourteen assistants in your office?

Mr. ANDERSON. In the office and at the warehouse, I think it is fourteen.

Senator TALIAFERRO. What is the salary of your chief clerk?

Mr. ANDERSON. One thousand five hundred dollars a year.

Senator TALIAFERRO. Just run down the list.

Mr. ANDERSON. One at $1,500; one at $115 a month, however much that is; two at $900; one at $65 a month; another one at $60; another one at $78, and there is a file clerk at $40 a month and a boy at $30 a month; there is a warehouseman at $900 a year, and a boy at the warehouse at $30 a month. I believe that is all.

Senator TALIAFERRO. That is eleven.

Mr. ANDERSON. And myself. That is all there are—twelve of us, all combined.

Senator TALIAFERRO. What is your salary?

Mr. ANDERSON. Three thousand dollars. There is another one there, Senator, at $1,200 a year, the shipping clerk. I forgot him.

Senator TALIAFERRO. That aggregates about $1,018 a month. Did you foot it up?

Mr. ANDERSON. I did not; no, sir. I will, though. [After making addition.] It comes to $1,013.

Senator TALIAFERRO. I had it $1,018; but I suppose you are right. I have no other questions to ask.

Senator MORGAN. Do you know of any person who owned or held or controlled any of the stock of the Panama Canal Company at or before the time that the railroad was turned over to the United States?

Mr. ANDERSON. I know nothing about that, Senator.

Senator MORGAN. You do not know anything about it?

Mr. ANDERSON. Not a thing.

Senator TALIAFERRO. Where were you employed before you came to the Panama Railroad?

Mr. ANDERSON. I was employed by the Northern Pacific Railroad for a number of years.

Senator TALIAFERRO. Was that your latest employment before coming to the Panama Railroad Company?

Mr. ANDERSON. No, sir. Previous to coming to the Panama Railroad I was with the Oregon and California Railroad, under A. B. Hammond. I think you know him, Senator Ankeny.

Senator ANKENY. Very well.

Mr. ANDERSON. I was there through the reconstruction of that road. You remember it was sold under the sheriff?

Senator ANKENY. The Goeble road?

Mr. ANDERSON. No; the Corvallis road.

Senator ANKENY. Mr. Hammond built the Goeble road.

Mr. ANDERSON. Yes; down at Columbia River there.

The ACTING CHAIRMAN. Please furnish the committee, as promptly as possible, the information and data that the Senator has called for, and we will excuse you.

Mr. ANDERSON. It will take some little time. I can not do it within a day or so. It will take some little time to prepare these data for you. I will get it down here as promptly as possible.

The ACTING CHAIRMAN. I understand that there are a number of gentlemen here who are interested in cement matters, and that two of them desire to be heard. Am I correct in that?

Mr. ACKERMAN. Mr. Lesley is one.

The ACTING CHAIRMAN. Who is the other?

Mr. LESLEY. Mr. Lober.

The ACTING CHAIRMAN. Who is to be heard first, and how long a time do you desire?

Mr. LESLEY. I have here a statement on behalf of the Association of American Portland Cement Manufacturers. Mr. Lober is here representing the association, and I am chairman of their committee. I do not think we shall require very much time; not over half an hour.

The CHAIRMAN. How much time do you wish, Mr. Lober?

Mr. LOBER. I do not think it will be necessary for me to take up any of your time. Mr. Lesley has a very careful statement prepared, and if you will listen to that I think that will be all that is necessary.

The ACTING CHAIRMAN. Then it is only desired that one of you shall be heard?

Mr. LOBER. Yes, sir.

STATEMENT OF ROBERT W. LESLEY, ESQ.

The ACTING CHAIRMAN. State your name, please.

Mr. LESLEY. Robert W. Lesley.

The ACTING CHAIRMAN. Where do you live?

Mr. LESLEY. Philadelphia.

The ACTING CHAIRMAN. What official position do you hold with any cement company?

Mr. LESLEY. I am president of the American Cement Company.

The ACTING CHAIRMAN. And have been for some time?

Mr. LESLEY. I have been with the American Cement Company and its predecessors for nearly twenty years, I should say.

Senator MORGAN. Is that a holding company? Does it hold and control the stock of other companies?

Mr. LESLEY. No, sir; it is a manufacturing company in Pennsylvania.

Senator MORGAN. It does not hold and control the stock of other cement producers?

Mr. LESLEY. No, sir. There are some small companies in the same field there, three or four of them, that we have built, and built by separate bonds which we issued ourselves.

Senator MORGAN. But they are really under your ownership?

Mr. LESLEY. Yes, sir. It is not a holding company in the big sense.

Senator MORGAN. That is all right.

Mr. LESLEY. If you will permit me, Mr. Chairman, I will just hand each of you a little statement which contains the facts probably better than I could state them to you; and I believe that many minds looking at the statement will accomplish the result better than listening to my statement of the contents of it.

The ACTING CHAIRMAN. Very well. Proceed, Mr. Lesley.

Mr. LESLEY. The first point that I desire to make here is simply this: That under the construction of the testimony that I have seen, and the general newspaper reports, the Government has been buying materials in the open market, and has adopted that policy; but in the evidence before this committee the other day the question was asked by Senator Dryden of Secretary Taft whether he would prefer action of Congress or not, and he said he would prefer to have Congress legislate. So I want to say that we come here not in antagonism, but entirely in sympathy with that thought, that there should be some means by which the money that is spent from this country on the construction of this canal might be employed for American materials and for American labor.

The ACTING CHAIRMAN. Regardless of the price that is to be paid?

Mr. LESLEY. I would say to this extent, as in the evidence here, also of Secretary Taft, as to the purchase of this line of steamers sailing under the American flag: There may arise contingencies under which a slight advance might be paid for American materials, for the reason, first, of using American labor, and for the further reason of securing proper inspection of the materials and prompt and proper deliveries. I think the question of convenience and the question of proper inspection enter into the whole matter as thoroughly as the question of cost. Further than that, as it has been generally considered that our labor can not go down to Panama and work there owing to climatic conditions, and as this cement industry is a very large one and employs a great deal of labor, it seems that it might be a very proper thing to give American labor an opportunity to work here where the climatic conditions are right and earn a living making Portland cement.

Senator MORGAN. By your labor, do you mean the men that grind the cement and burn the cement?

Mr. LESLIE. Yes, sir; the men who quarry the cement, the men who crush it, the men who grind it, the men who burn it, the men who warehouse it and put it on the cars.

Senator MORGAN. Why can they not do that work on the Isthmus?

Mr. LESLEY. I do not know that they can not. I was speaking merely of the question of common labor on the Isthmus.

Senator MORGAN. Why can not that be performed on the Isthmus—the common labor?

Mr. LESLEY. I understood that so far the consideration of the labor question there showed that the ordinary laboring man working there had to be superseded by some other class of labor coming from a hotter country. I may be wrong about that.

Senator MORGAN. There is a great difference of opinion upon that subject. American labor has had no trial there, really.

Mr. LESLEY. Yes, sir. I did not know that. I am merely answering Senator Kittredge from the best knowledge that I had.

Coming down to the principal thing, and trying to make the issue very sharp, if it is possible to be done, I have laid this rather on a letter from the secretary of the Panama Commission, Mr. Bishop, who replied to a number of Senators as to the last purchase of Portland cement for the Panama Canal, where it is stated that if he had purchased American cement he would have paid $7,400 more. That letter is appended to the back of this statement of mine. You will find that he says that "As the quantity of cement purchased at that time was 20,000 barrels, you will note that this lot of cement would have cost $7,400 more if the use of foreign cement had been prohibited."

That being the statement, the question comes up, first, as to whether there is any duty on materials entering into the Panama Zone. I think it is settled that there is not. Therefore, an American cement or a foreign cement going to the Panama Canal Zone, intended for construction on the canal work, are on a parity.

The next question is whether American Portland cement is equivalent to or fully as good as foreign Portland cement. I can answer that, probably, by saying that it is not only as good, but that it is recognized all the world over as better. I can answer it further by saying that the Government, in the very department which has control of the Isthmian Canal—that is to say, the War Department—in all of its specifications inserts the words "American Portland cement." So that there is no question as to the quality of American Portland cement. I can answer it further by saying that the first Panama Canal Commission, which was a commission of engineers—William Barclay Parsons and Mr. Burr and a number of engineers—not a board of consulting engineers, but a commission composed of engineers—and they specified American Portland cement in their first specifications.

So that of those two questions, as you will see in the statement, we find that the cement is the equivalent of foreign cement, and that it has no preference, so far as duties are concerned, on the Panama Zone.

The only other question is, What makes it cost more than foreign cement, if it is as good and if it is made in this country? Why can it not be delivered there, half the distance, as cheap as foreign cement coming twice the distance, from Antwerp, Hamburg, or Bremen? If it can be shown by the letters that I have here, one of which is at the back of this statement——

Senator KITTREDGE. You refer to the Bishop letter?

Mr. LESLEY. The other letter is the letter from the Panama Railroad Company, Panama Railroad Steamship Line, which follows the letter of Mr. Bishop. Mr. Bishop says that it would cost $7,400 more to buy this American cement that the foreign.

Senator MORGAN. In what quantity?

Mr. LESLEY. Twenty thousand barrels. What I am trying to direct your attention to is a letter signed by R. L. Walker, traffic manager of the Panama Railroad Company, Panama Railroad Steamship Line, under date of March 30, 1906, as to the freight rates on the Panama vessels, and to show you that at the existing freight rates on this Panama line, controlled by the Panama Railroad, in turn owned by the Isthmian Canal Commission (for which, as Senator

Morgan has said a few minutes ago, the Government is, at the back of the line, responsible)—that that line of steamships made so high a freight rate that it was impossible for the American manufacturers, over that single line of steamers going down to the Isthmus of Panama, to compete with the foreign steamers, making a profit on a haul of twice the distance.

In other words, to get back to the point, the original letting of the Panama Canal cement, the first letting, which was in 1904, under the first Commission, gave the bidder two means of delivery—one, to ship by way of New York, by the Panama Railroad steamers, with freight from New York to Colon paid by the Commission; second, to ship from any convenient port, freight and all other charges paid by the bidder.

That opened the supplying of materials to the Panama Canal to the coastwise commerce of the United States. It also gave you the privilege, if the rates were not too high, to ship via the line of steamers which was controlled by the Panama Railroad at that time.

Subsequently, however, after this change of organization and change in the control of the Panama Railroad and change in the constitution of the Commission, a new letting—which is the letting referred to in the letter of Mr. Bishop where the 20,000 barrels were purchased and where this $7,400 would have been saved—a circular, No. 268, for those 20,000 barrels of cement, came out on August 23, 1905, and it abandoned the coastwise shipments entirely. It required deliveries only by steamship. At that time there was only this one line from the Atlantic coast to Panama. And it made the lots so small, namely, as the purchasing agent has just described, so small that they had to go by the steamship line. They were not cargo lots. Under that particular letting the words "American Portland cement" were changed to "Portland cement," leaving the word "American" out. The delivery was restricted only to steamships. The lots were made so small that no one could charter a steamship, and the American coastwise commerce was absolutely excluded, as well as the American manufacturer.

Senator TALIAFERRO. So that these specifications that you have referred to operated as a distinct discrimination against the American producer?

Mr. LESLEY. Absolutely; and against the American coastwise commerce. Absolutely. I propose to go a step further——

Senator MORGAN. I want to call attention to what I consider the fact here, though perhaps I may be mistaken about it: Mr. Drake, in his testimony, gave an account of an arrangement between the Panama Railroad and certain established lines of steamers that had connections through with the Pacific—from the Atlantic to the Pacific—by which the railroad company agreed to take 25 per cent of their freights for the transmission of goods across the railroad. As I remember it now, that combination of ship lines included seven or eight great lines.

Mr. LESLEY. Yes, sir.

Senator MORGAN. Are those the lines that you speak of as being under the control of the railroad?

Mr. LESLEY. No, sir. I say that the one line that is under the control of the railroad is this one American line. They may have relations with the foreign lines, whose freight rates I have here, but

I am not aware of that. The quotations which I secured from Europe for this cement to Panama, in order to compare our American rates with foreign rates, I took merely from steamships all over the world. I did not know whether there was any relation between the foreign steamships and our Panama line, and of course I could not speak on that.

Senator MORGAN. Perhaps I had better explain, because you do not seem to have considered that view of the situation. The testimony taken two years ago sets out one of these contracts with one of these lines, as a sample contract.

Mr. LESLEY. Yes, sir.

Senator MORGAN. And it gives to the steamers who enter into these contracts and make bills of lading for transmission across into the Pacific Ocean or from the Pacific to the Atlantic the advantage of a rate of 25 per cent upon their freight charges for the voyage, I believe, out and in, which other and disconnected steamers can not avail themselves of—what we call tramp steamers, or visiting steamers, that visit different ports at their will and pleasure, without having particular schedules or sailing dates. So I suppose that the reference that you make there is or may be to those lines of steamers which in this way have privileges granted to them by the railroad company that the others have not.

Mr. LESLEY. I dare say that that is the case, sir. The delivery is especially stipulated only by steamship. In the first lot, Senator, the shipment was by American schooners. We supplied cement there by American schooners, and it went down, and our coastwise commerce got the advantage of it. But in this later letting it was absolutely confined to steamers, and schooners were excluded; and the lots were too small to warrant anyone hiring a steamer.

Senator TALIAFERRO. Did you call to the attention of the canal authorities these circumstances that you are relating to the committee?

Mr. LESLEY. My recollection is that at the time our representative came down to Washington here and called their attention to them verbally. We saw that there was no possible opportunity for doing any business.

Senator TALIAFERRO. Did you call to the attention of the canal authorities the fact that if you were left free to ship your cement to the Isthmus by our coastwise shipping that you could compete with the foreign markets?

Mr. LESLEY. I do not know that myself; no, sir. I am not aware of that. There was a large correspondence at the time, but I did not take any active part in it.

Senator MORGAN. That was a fact, was it not?

Mr. LESLEY. I should say so; but they made the second specifications identical, within the last three weeks.

Senator TALIAFERRO. Has their attention been called to it since?

Mr. LESLEY. By correspondence. A number of manufacturers said that they would write on this subject to the Commission.

Senator MORGAN. Whether their attention has been called to it or not, I understand that the fact is that the exclusion of schooners from this trade was, in effect, an exclusion of vessels that had the privileges of the coast line.

Mr. LESLEY. That is right.

Senator TALIAFERRO. And a discrimination against American products?

Mr. LESLEY. Yes, sir; a double discrimination.

The ACTING CHAIRMAN. Did the purchase of the cement mentioned in Mr. Bishop's letter call for delivery at New York or Colon?

Mr. LESLEY. At Colon, sir.

The ACTING CHAIRMAN. And in the specifications asking for bids, what was the exact language employed in that feature of the proposal?

Mr. LESLEY. I will give you the exact language. Here is the language of the specification, sir: "All cement to be delivered c. i. f. by steamer at either Colon (Atlantic port) or La Boca (Pacific port), Isthmus of Panama; and it is to be understood that the prices bid cover delivery of goods on dock, without any additional cost to the Government beyond the prices named. Inspection will be made at the place of manufacture or purchase, to determine whether material meets the requirements set forth in the specifications, and on the Isthmus as to condition on arrival there."

Those are the identical words of the specifications.

Senator TALIAFERRO. You are quite satisfied that the authorities of the Canal Commission had their attention brought to the fact, some time ago, that that language was discriminatory against our coastwise shipping and against your product?

Mr. LESLEY. I am very sure that there was so much indignation among the cement manufacturers that everybody said they would write a letter; but I do not mean that I have any personal knowledge at this time that it was done.

Senator TALIAFERRO. Were you not the president of one of the companies?

Mr. LESLEY. Yes, sir; and my representative did call on the purchasing agent in Washington and make a verbal statement at the time of this first bidding.

Senator TALIAFERRO. You know that he was instructed to do that?

Mr. LESLEY. Yes, sir; but I did not want to give you anything that I did not know actually of my own knowledge.

Senator MORGAN. You know that schooners were dropped out and steamers put in?

Mr. LESLEY. Yes, sir; because we supplied schooners and the foreigners supplied the steamers.

Senator MORGAN. Is this steamship line that is owned by the railroad company a cargo line or a cargo and passenger line?

Mr. LESLEY. As I understand, it is a general line, controlled by the railroad, and taking mixed shipments of all kinds of things in small lots.

Senator MORGAN. And passengers?

Mr. LESLEY. Yes, sir; so far as I know. It is the only line from New York down.

Senator MORGAN. What you want, for the convenience of the cement trade, is to be able to command the services of sailing ships, or cargo ships if they are steamers?

Mr. LESLEY. Right. Yes, sir.

Senator TALIAFERRO. Our coastwise shipping?

Mr. LESLEY. Yes, sir. That is what I think we ought to have.

The next point that I want to make here is in connection with a lot of freight rates that I had received at the time of the letting of this contract, to show what the foreign freight was at that time.

The foreign lines of steamers running from London, Hamburg, and Bremen, which I understand are coastwise steamers along the Atlantic and South American coast, do a general steaming business with return cargoes. I had rates from them from 67 cents, from 45 cents, from 55 cents, and various figures, which I have here in cables, which I would be glad to have translated if you so desire. They are all in the code, and I have had lead-pencil translations made. Therefore the fact was that, under those particular specifications, the American manufacturer was driven to a single line, which charged him $5 for a net ton of cement, per short ton—that is, 2,000 pounds—or, as a barrel of cement is reckoned at 400 pounds including the package, at the rate of $1 a barrel, 5 barrels to the 2,000-pounds ton.

And, against that, the foreign ships were transporting this same material at rates from 45 cents, in some large tramp vessels, to 10s. 6d. per long ton, or from 45 cents to 60 cents or 65 cents a barrel, a discrimination or a difference in favor of the foreign shipper as against the American shipper of more than the difference that Mr. Bishop shows is the reason that this cement was bought from a foreign shipper; or, in other words—while I am on this point I will just give you one little sum in arithmetic: In other words, if this Panama line, owned by our Government, through the Isthmian Canal Commission, could transport a barrel of cement 1,972 miles at the same price that the foreign steamship line could transport it 5,000 miles, each line making a reasonable profit, the fact would have been, taking the average of the foreign freights at 57 cents, that there is a difference of 43 cents against the American manufacturer; but if the Panama Railroad Line Steamship Company had made the same rate as the foreigner——

The ACTING CHAIRMAN. From what point?

Mr. LESLEY. From New York; 1,900 miles.

Senator TALIAFERRO. From what foreign point?

Mr. LESLEY. From Antwerp or London. From London to Colon is 4,742 miles, and from Hamburg it is 5,049 miles.

Senator TALIAFERRO. Could you not just as well incorporate the rates as you go along, to make it clear in the record?

Mr. LESLEY. Yes; I will give it to you right away. The distance from London to Colon is 4,742 miles.

Senator TALIAFERRO. And the rate is what?

Mr. LESLEY. Ten shillings and 6 pence per long ton.

Senator TALIAFERRO. Which is how much a barrel, in dollars and cents?

Mr. LESLEY. I will give that in a few minutes. It is about 55 cents.

Senator TALIAFERRO. I think it would be clearer to have it appear in the record together. I am very much interested in it, and I would like to have the record show it just as it is.

Mr. LESLEY. I can figure that out in a moment. I was dealing with averages in this thing before, but I think I have the figures on which I based them. I have my cable dispatches. Here is a cable dispatch from Hamburg, with a rate of 68 cents for the 5,048 miles from Hamburg. That is a short ton. Here is a London rate, 10 shillings and 6 pence per gross ton, per long ton. That is from London by the

Royal Mail Steam Packet Company, which runs from London to Colon fortnightly. That would be practically 6 barrels to the ton, which makes about 52 cents a barrel. One moment; taking 10 shillings and 6 pence and the short ton, without going into the 2,240 pounds, it makes it even greater; it would be $2.62, and dividing that by 5 barrels would give 52 cents a barrel practically. But I was fairer than that. I took 57 cents as an average. There is one, and that is the successful contract.

Senator TALIAFERRO. Now, from New York to Colon? Give the distance first.

Mr. LESLEY. This is given to me by the secretary of the Maritime Exchange, in Philadelphia. The distance there is 1,972 miles.

Senator TALIAFERRO. And the rate?

Mr. LESLEY. And the rate given by the letter signed by R. L. Walker, traffic manager, was $5 per short ton from December 31, 1905, to March 31, this year. Right after this last letting they made a change in the rate.

Senator TALIAFERRO. That is substantially a dollar a barrel?

Mr. LESLEY. Yes, sir; as against 52 cents, the English rate.

Senator MORGAN. Is a barrel 400 pounds?

Mr. LESLEY. Yes, sir; 380 pounds, and with the weight of the barrel it would be 400 pounds, technically speaking.

Senator TALIAFERRO. Where is the inspection of this cement?

Mr. LESLEY. The inspection is stated to be at the place of manufacture. [Reading:] "Inspection will be made at place of manufacture or purchase, to determine whether the material meets with the requirements set forth in the specifications, and on the Isthmus as to the condition upon its arrival there."

Senator TALIAFERRO. That is covered, then, and there can be no contention that the cement would be injured by going in a sailing vessel?

Mr. LESLEY. No, sir; it is covered in both cases.

The ACTING CHAIRMAN. If you were permitted to have a free-hand in the matter of shipment, could the American manufacturer compete with the world in cement?

Mr. LESLEY. Absolutely. I think in any case wherever we have got shipping we are competing.

I want to say one thing that may be of interest to you, because I am, probably, the oldest man in the industry, and have been on every tariff commission since 1883, trying to keep a low but a stable condition in this industry. I have seen it grow from 50,000 barrels to 36,000,000 barrels as the record for 1905, and it will be 40,000,000 for 1906. I have seen that growth.

The ACTING CHAIRMAN. Do I understand that you are prevented from having the free-hand in shipping because of specifications?

Mr. LESLEY. These particular specifications; yes, sir.

The ACTING CHAIRMAN. Has that continued for any length of time?

Mr. LESLEY. Every letting under D. W. Ross, general purchasing officer, has come out in these terms. The old bidding was under a different purchasing agent, as I remember it, and had this permission to ship in schooners, as I stated.

Answering your question, Senator, as to whether we can export this cement, I have seen the imports of this cement dwindle from

nearly 4,000,000 barrels down to about 600,000 barrels, and the American exports increase from nothing to, I think, considerably over a million and a quarter barrels this year.

The ACTING CHAIRMAN. The real cause, then, as I understand, of your complaint, lies in the specifications?

Mr. LESLEY. Yes, sir.

The ACTING CHAIRMAN. The specifications that are put out by the Commission?

Mr. LESLEY. Yes, sir.

The ACTING CHAIRMAN. In what manner can this committee recommend a remedy for that condition?

Mr. LESLEY. Well, I would say this, that it can recommend a remedy, this being a department of the War Department of the United States, by adopting the specifications, or making the specifications conform to the ordinary specifications adopted by the chief engineer and the board appointed by the War Department for that purpose, which put in the words "American Portland cement" in every specification issued by the War Department.

Senator TALIAFERRO. You would not require that, Mr. Lesley, if these other difficulties could be removed, would you?

Mr. LESLEY. I do not think we would; but I believe it would be the fairest to the producers of this country and the public at large.

Senator TALIAFERRO. If this committee should make a recommendation of that sort, it would be construed by the people at large that they desired this material bought in this country regardless of the difference in price, whereas, if I understand you correctly, you are entirely willing to compete with the foreign market, if these specifications of this Canal Commission give you the opportunity to do so?

Mr. LESLEY. We have been able to do it, when the cement was required to be American and when the shipments were in coastwise ships. I have a note here of the coastwise shipments, and the schooner rates are from 55 cents to 65 cents a barrel, according to the character of shipments, according to the quantity. The lots named in the specifications, from 2,500 to 3,000 barrels, would cost 75 cents a barrel, or would make American cement cost more than the figures in my statement. If the shipments were allowed to be large enough so that we could ship in cargo lots, in that case the frieght rate would be 55 cents, at the present condition of the market, and our prices would be lower than those of foreign cement.

The ACTING CHAIRMAN. Can you give us the names of any gentlemen who have specifically called this matter to the attention of the Commission?

Mr. LESLEY. I think I can, but not at the moment. I think Mr. King, of our New York company, did.

Senator KITTREDGE. Will you furnish that?

Mr. LESLEY. Yes. I know Mr. King came down here on this matter.

The ACTING CHAIRMAN. Will you furnish us the names of the gentlemen who have done so?

Mr. LESLEY. Yes, sir.

The ACTING CHAIRMAN. Perhaps you can find correspondence with the Commission on the subject?

Mr. LESLEY. I will go through my files. I know at the time we were very much interested in it.

Senator TALIAFERRO. Perhaps some of the other houses would have among their files copies of letters that they had written on this subject.

Mr. LESLEY. Yes. I will use every endeavor to find out.

Here is one letter from one of my New York agents, in which he refers to the rate of a dollar a barrel from New York to Colon, and he said: "Kindly advise if we are to bid, after considering these clauses," that is, the clauses as to these deliveries. "As the proposals permit the furnishing of foreign cement in relatively large lots, it seems to us here unwise to put in a bid at this time."

That is the feeling among the different people dealing with the product.

Senator TALIAFERRO. The specification for steamer delivery is what prevented you from competing?

Mr. LESLEY. Yes, sir.

Senator TALIAFERRO. It prevented you from competing with the foreigner on that cement?

Mr. LESLEY. Yes, sir; and, further than that, I believe the striking out of the word "American" tended to discourage the general American manufacturer. At the first letting under these new specifications, I think half the bidders were American and half foreign. At the last letting there was not a single American bidder—absolutely not one.

Senator MORGAN. In regard to this last letting, let me ask you: It seems from Mr. Bishop's letter here that the American producers of cement did put in biddings under that?

Mr. LESLEY. This one here; yes; but there has been one since. There has been one within a month—on March 19—at which there were no American bidders. They were all foreign. It was simply given up.

Senator MORGAN. The letter of Mr. Bishop is dated April 16, is it not?

Mr. LESLEY. Yes, sir; but he refers to a purchase on October 7, 1905.

Senator MORGAN. The Americans put in biddings at that time?

Mr. LESLEY. Yes, sir.

Senator MORGAN. At that time had the change been made from schooner to steamer?

Mr. LESLEY. Oh, yes, sir.

Senator MORGAN. So that your biddings when they were put in had reference to the rate of transportation?

Mr. LESLEY. Absolutely.

Senator MORGAN. He says: "After full investigation and test, the lowest bid was accepted and the cement furnished on the contract has proven to be very satisfactory. As the quantity of cement purchased at that time was 20,000 barrels, you will note that this lot of cement would have cost $7,400 more if the use of foreign cement had been prohibited."

Mr. LESLEY. Yes, sir.

Senator MORGAN. If Mr. Bishop understood what he was writing about, and I suppose naturally he must have done so, why he seemed to ignore entirely the difference in freight rates between shipments from Europe and those from New York?

Mr. LESLEY. Over their own line; yes, sir. If they had taken these 20,000 barrels and given themselves the credit for the difference

between the freight rate asked by them and that freight rate which is the average, not of the lowest, but the average of the highest and the lowest for foreign cement, and his line had been able to transport half the distance for the same money, he would have made $8,600 for the Panama Steamship Line, the Panama Railroad, and the Isthmian Canal, to set off against his loss of $7,400, and he would have been $1,200 to the good, and would have used the American product. That is the situation.

Senator MORGAN. I suppose Mr. Bishop really did not know what he was writing about. He is not a business man, is he?

Mr. LESLEY. I do not know him at all.

Senator MORGAN. I do not either.

The ACTING CHAIRMAN. Why was the provision requiring delivery in lots inserted in the specifications?

Mr. LESLEY. That I do not know, sir. They are just lots too small for a ship. It may be for the convenience of the Canal Commission in the handling of the material. That I do not know.

Senator TALIAFERRO. Would they not, perhaps, say that they required that character of delivery to avoid the risk of loss by holding the cement on the Isthmus?

Mr. LESLEY. That might be possible, sir. I do not doubt that they have a good reason for that.

The ACTING CHAIRMAN. Your proposition, then, is that you should be permitted to have lots of the character indicated in the specifications and a lower freight rate, as was permissible from the old country?

Mr. LESLEY. That is right; that we should either on the isthmian canal steamers have the same rates for half the distance as London makes for twice the distance, or that it should be open to the coastwise commerce of the United States and the lots made large enough to warrant chartering a fair-sized schooner.

The ACTING CHAIRMAN. So that, in stating the real complaint a moment ago, you wish to make that addition?

Mr. LESLEY. I want to make that addition; and, further, still standing on my American——

The ACTING CHAIRMAN. I understand.

Mr. LESLEY. I am quite an American, and I have seen this business grow, and I believe that we can supply cement all over the world at better prices than it could be bought for, at equal freight rates; and I believe it is important.

Senator MORGAN. I wish to ask you whether cement, after it is manufactured, is amenable to loss or destruction by becoming damp?

Mr. LESLEY. Cement properly housed and in good packages will not be materially affected by damp.

Senator MORGAN. What kind of packages do they ship it in?

Mr. LESLEY. In this particular case the requirement is for barrels which are lined with water-tight paper.

Senator MORGAN. Is that superior to the packages in canvas?

Mr. LESLEY. Well, I have shipped from New York to New Orleans in canvas. I have shipped still farther distances, across the ocean, in canvas, and they have been good shipments. I am not familiar enough with the particular atmospheric conditions in Colon to give an opinion on that subject.

Senator MORGAN. If cement becomes thoroughly saturated with water after it is produced, does that destroy its value?

Mr. LESLEY. If it is completely saturated with water it ceases to be cement and becomes stone; but if it absorbs water—and that is the point you mean, of course—if the barrel absorbs water gradually, and takes up the dampness, it will harden a little on the outside. The likelihood of that hardness extending through is very doubtful. It will probably cake in for an inch or so, and when you break the cake there is a great deal of dry powder in the center.

Senator MORGAN. The dangers of a long voyage to cement are in proportion to the length of the voyage, in reference to a shorter one? Cement produced in Europe is more likely to deteriorate than cement produced in the northern parts of the United States, in consequence of the length of the voyage?

Mr. LESLEY. Well, I would not like to say that. I think that, considering the packages to be equal, the difference in distance would not cause any material deterioration in the foreign as compared with ours.

Senator TALIAFERRO. The risk is greater?

Mr. LESLEY. Yes, sir. But I wanted to be fair with the other fellow.

I believe this in this matter: That the great advantage of buying American cement is twofold. One is the great advantage of inspection in this country, the advantage of having the testers at the mills and having the inspection promptly at a place where the testers are under the supervision of the engineers and of the body of men who have to do with the using of that material. Here is the case of the building of a tremendous dam down there, involving the spending of perhaps hundreds of millions of dollars, and it would certainly not seem to be wise to have that stuff inspected by some inspecting bureau over in London, who hire some man at $5 a week who goes and inspects. That man is not under the eye of the chief, and the chief is responsible for the job.

There is where, I say, the American cement has the advantage, being subject to the same inspection that the War Department gives to its cement in this country, with the same type of men under the same sort of engineer officers, which will insure the right kind of material. I know what it means to inspect cement three or four or five or six thousand miles from the place which it will be used. It is a different proposition. This has been demonstrated in a number of cases where cargoes have gone out from England to New Zealand and Australia and places like that. There is where I feel that with the American producer you have some advantage, by reason of the better location and of the better opportunities for inspection of that material under American engineers.

Senator MORGAN. But in every case the inspection ought to take place at the point where it is used?

Mr. LESLEY. I think, Senator, that the better practice is to inspect it, in shipments of this kind, for the quality—that is, the requirements of the specifications—at the place where it is manufactured or at the point where it is to be shipped, and then, as it arrives at its destination, to inspect it again, to see that it has not suffered in the journey.

Senator MORGAN. That is right.

Mr. LESLEY. And not make a double inspection for quality.

Senator MORGAN. And you want an American inspection, because then you can inspect the inspectors?

Mr. LESLEY. That is the whole point, Senator. You have hit the nail on the head. This work is too serious to trust it to a $5 a week man working for testing laboratories 5,000 miles away.

Senator MORGAN. If by any accident or incident a bad quality of cement should find its way into a dam that is required to be as nearly perfect as possible through all of its part, would not that be a disastrous affair?

Mr. LESLEY. Most disastrous.

Senator MORGAN. So that it is necessary to have, in the use of cement, close inspection at the time of manufacture and close inspection at the time of use?

Mr. LESLEY. Yes, sir.

Senator MORGAN. Otherwise you expose a great dam to weaknesses, if I understand it correctly, because of its want of uniformity of strength throughout the whole extent of the structure?

Mr. LESLEY. That is right. I will give you an illustration in point: The largest dam in the world of a solid mass of masonry, only surpassed by the Pryamids as a solid block, is the Croton dam, near New York City, that has some 900,000 cubic yards of masonry, I think. The engineer there was only 100 miles from the place where he was buying his cement, and yet he would not establish his inspector up at the mill to test that cement, because he said: "I want him under my eye."

He sent him up to sample carloads of cement, or bins of cement, and then he made him bring those samples down to his laboratory, which was next to the engineer's office, and absolutely make those tests where the engineer could catch anything that was going wrong at any time. So, also, at the Clinton dam, which is the largest body of water, I think, in this country held by a single dam, some 40,000,000,000 gallons—precisely the same precaution was taken. Mr. Stearns, the engineer, who has been before you here, would not let his inspector live at our mill. He said: "I do not believe that is right. I will let a fellow send the box down, but I will not let the inspector live at the mill. My reputation is at stake."

Senator MORGAN. That indicates that extreme care is to be taken in the use of cement in building dams?

Mr. LESLEY. Absolutely.

The ACTING CHAIRMAN. The Clinton dam that you refer to is for the Wachusett reservoir?

Mr. LESLEY. Yes, sir.

The ACTING CHAIRMAN. The one now being constructed as a reservoir for the water supply of Boston?

Mr. LESLEY. Yes, sir.

The ACTING CHAIRMAN. Your company had the contract for supplying the cement?

Mr. LESLEY. Yes, sir.

Senator MORGAN. You have knowledge of the production of cement in the United States by all the large establishments?

Mr. LESLEY. Yes, sir.

Senator MORGAN. You have investigated the subject very thoroughly?

Mr. LESLEY. Yes, sir.

Senator MORGAN. Portland cement is made after a chemical formula?

Mr. LESLEY. Yes, sir; it is made within certain limits of lime, silica, and alumina. There are two formulas—what is known as Newberry's and what is known as Le Chatellier's formula. They relate to the proportion of the argillaceous materials (silica and alumina) to the calcareous (lime).

Senator MORGAN. That affects the proposition as to whether it is Portland cement or not?

Mr. LESLEY. Yes, sir.

Senator MORGAN. There is an allowance of a variation of 5 per cent from the formula?

Mr. LESLEY. Yes, sir; or you might say that the lime content in a good Portland cement might vary from 58 per cent in the old dome-kiln practice to 63 or 64 under the modern rotary-kiln practice.

Senator MORGAN. Take either of these formulas as the standard that the Commission might adopt for the cement—would there be any difficulty in getting a number of American producers to supply the cement corresponding to the formula?

Mr. LESLEY. Absolutely none whatever.

Senator MORGAN. None at all?

Mr. LESLEY. No, sir. They make not only the chemical formula, which is the basis upon which the manufacturer makes what he calls his composition, and which is the raw material, before calcination, but they discover whether that is right by a clause which gives them the right to chemical analysis of the finished product. In other words, given a composition containing carbonate of lime, alumina, silica, carbonate of magnesia, and representing this by VXYZ, chemical analysis of the finished calcine product would show all these materials, the carbonic acid gas having been driven out of the lime, and the magnesia and the calcine product, or Portland cement, showing the percentages of these different materials readjusted in a new unit less the carbonic-acid gas. The analysis of the finished cement will show whether the chemical formula of the composition was or was not right.

Senator MORGAN. The other questions relating to the production of cement would be those between competitive producers?

Mr. LESLEY. Right.

Senator MORGAN. As to who would make it the cheapest, and who would find the cheapest transportation to the Isthmus?

Mr. LESLEY. Yes, sir.

Senator MORGAN. And so on?

Mr. LESLEY. Yes, sir.

Senator MORGAN. We need not consider those?

Mr. LESLEY. Not at all.

Senator MORGAN. But your statement is that there is an abundance of material in the United States for producing cement according to any formula that the Commission may choose to adopt for the supply of that canal in all parts and at every place?

Mr. LESLEY. There is no doubt about it—on the Pacific coast and on the Atlantic coast and down the Mississippi Valley, and all points between, on a line right across the United States. There is no doubt about it.

Senator MORGAN. Then, when you speak of American cement you mean cement of the very best quality, uniform in its properties, and reliable as a structural material?

Mr. LESLEY. Absolutely.

Senator MORGAN. That is what you mean by American Portland cement?

Mr. LESLEY. Yes, sir.

Senator MORGAN. Taken in these aspects, is it equal to Portland cement made in foreign countries?

Mr. LESLEY. Absolutely; and the general opinion to-day among engineers the world over is that we are making better cement.

Senator MORGAN. That is the point that I wanted to get at. In what respect could the cement produced in America be better than the foreign cement, or is it?

Mr. LESLEY. The answer to that would be this: Originally cement was pretty much all labor. The raw materials—chalk and clay—were ground together in a wet paste or cream, which was run out into setting tanks or vats, where this material was allowed to dry by evaporation and decantation. After several months it was brought in onto heated floors, where further moisture was driven out. Then it was put into kilns, similar to the old-fashioned limekilns or bottle kilns, with a dome or chimney to them, and interlaid with layers of coke. These set kilns were then allowed to burn out, and the clinker produced was ground in old-fashioned millstones. Of course improvements followed this practice in Europe of late years, and the early mills in this country were, to a certain extent, improvements on some of the old dome-kiln plants of Germany and England.

Those processes were too slow for this country, and our labor was too high to admit of the successful growth of the industry under those conditions. Our quick manufacturing minds and clever inventors produced the great growth of the American industry by discoveries in new methods of grinding and new methods of burning. These two lines of discovery the iron mills, such as the Griffin, Kent, Huntington, and Gates & McCully crushers, gave an impetus to the preparation industry by perfecting and economizing on the grinding side of the business, while the development of the rotary kiln, which is essentially an American practice in Portland-cement manufacture, substituted possibly a little higher amount of fuel for a greatly lessened amount of labor, as contrasted with the older processes. The result is to-day that American practice is being adopted all over Europe.

Senator MORGAN. I was about to ask you that.

Mr. LESLEY. Yes.

Senator MORGAN. They are quitting the old mud practice?

Mr. LESLEY. Yes; they are coming to our practice. At the Lehigh to-day, or a few weeks ago, there was a Japanese, a Chinaman, and some fellow from New Zealand, to say nothing of some other men, all studying in that school how to make cement, or desiring to study it. We to-day are ahead of the world.

Senator MORGAN. You spoke about the rapid increase in the production of cement in America. That is because of the great demand for that material for structural purposes?

Mr. LESLEY. Yes, sir.

Senator MORGAN. It is the increasing demand that caused the rapid increase of production here?

Mr. LESLEY. Yes, sir; and the number of new purposes for which it is used.

Senator MORGAN. That is a field that, apparently, at this moment, is inexhaustible?

Mr. LESLEY. Absolutely. There are some figures, up to 1892, showing how the industry has grown. [Exhibiting pamphlet to Senator Morgan.]

Senator MORGAN. Yes; I understand how it has grown. I was trying to get at the causes of it—whether they were speculation or causes that arose out of necessity.

Mr. LESLEY. Senator, I am afraid I may have to digress again.

Senator MORGAN. All right. Go ahead.

Mr. LESLEY. I think it is due to this: A few hundred years ago this was a new country, and we had to have houses.

Senator MORGAN. Yes.

Mr. LESLEY. And we had to have stores and we had to have bridges and we had to have sidewalks. We took the first material that came to hand, which was wood. We had plenty of that. Europe destroyed her forests probably fifteen hundred years ago and came to permanent construction long before America was ever discovered.

Senator MORGAN. Yes.

Mr. LESLEY. America has come to the time when, by reason of her great wealth, she is coming to permanent construction for fire insurance and sanitary reasons. Further than that, she is coming to permanent construction because the lumber is giving out.

Senator MORGAN. Yes.

Mr. LESLEY. When you come to that question, then, you get up to the line of least resistance. If you have no wood you come to brick, which has labor unions; you come to stone, which is not to be found in all parts of the country—good building stone; and the only other thing is cement, which, with the broken stone, or the burned clay that can be made of gravel that is found everywhere, will build your houses anywhere that you could formerly build a wooden house.

Senator MORGAN. And in any shape you want it?

Mr. LESLEY. Yes, sir.

Senator MORGAN. And to any height you want it?

Mr. LESLEY. Yes, sir; and it will stand more abuse than any man would dream of.

Senator MORGAN. Well, Mexico and Egypt and Syria all passed through the same process.

Mr. LESLEY. Yes, sir.

Senator MORGAN. And that caused the Mexicans to adopt the adobe houses.

Mr. LESLEY. Yes, sir.

Senator MORGAN. So that everything points to cement as a structural material?

Mr. LESLEY. I believe so.

Senator MORGAN. Therefore the market is inexhaustible in the future?

Mr. LESLEY. It seems to be. I am frank to say that in the early days of the industry one man said that he was going to make a mill that would make 3,000,000 barrels of cement. I said he was a crazy

idiot. To-day he must be making 10,000,000 barrels a year. I was the man who was wrong, and yet I was one of the pioneers in the industry, and believed in it. But I did not believe it would grow as it has grown.

Senator MORGAN. Looking forward to the construction of this canal, we see that that is the material that can be most usefully employed in all dams and fences against the water of every kind?

Mr. LESLEY. Yes, sir.

Senator MORGAN. Therefore the quantity of cement that is to be used in this canal, no matter on what plan it is built, is at present not known?

Mr. LESLEY. I think that is a perfectly safe proposition.

Senator MORGAN. And it is more liable to increase than to decrease, and to increase very greatly.

Mr. LESLEY. Yes.

Senator MORGAN. So that this question of the supply of cement is one of the essential points in the cost of these structures and in their endurance?

Mr. LESLEY. Yes, sir.

Senator MORGAN. What is the effect of earthquakes upon cement structures, or have you any experience or knowledge in that direction?

Mr. LESLEY. I shall have inside of the next three weeks a series of special photographs from the Pacific coast on that subject. There is a man out there taking them for me now. I would not like to say until I get those photographs. [Laughter.]

Senator TALIAFERRO. You may not want to show them. [Laughter.]

Mr. LESLEY. I may not want to show them. But I am going through the motions, and doing the best I can to find out about it.

Senator MORGAN. I hope you will show them to the committee, when you get them, because we want to know, whether they go right or wrong to you.

Mr. LESLEY. I shall be very glad to put them at your service.

Among other things, I edit some sort of a cement paper, when I have nothing else to do, and these are pictures for that paper. I shall be glad to hand you all pictures of anything we have, and any private ones, also.

Senator MORGAN. We may find use for those in the Senate. They will be of material interest.

Mr. LESLEY. I shall be glad to put them at your service.

Senator MORGAN. So that we can rely upon the quantity to be produced, and the uniformity of production, as compared with any formula that may be prescribed?

Mr. LESLEY. Yes, sir.

Senator MORGAN. And the delivery at Colon would require only half the distance of ocean travel that would be necessary if we go to Europe to get the cement?

Mr. LESLEY. Yes, sir.

Senator MORGAN. Those are the advantages of the American cement?

Mr. LESLEY. Yes, sir.

Senator MORGAN. I have no further questions.

Senator ANKENY. You mentioned in your former contract that you were enabled to ship this at a lower rate by schooners in what were called "lots?"

Mr. LESLEY. Yes, sir.

Senator ANKENY. Of course "lot" is an indefinite term. What is a lot? What do you mean by a lot on a schooner?

Mr. LESLEY. I think I can give you that in one moment.

Senator ANKENY. I mean, approximately.

Mr. LESLEY. I have two freight rates. The freight rate by schooner of 2,500 barrels to 3,000 barrels——

Senator ANKENY. Two thousand five hundred barrels is a fair schooner lot?

Mr. LESLEY. Yes, sir. They want 75 cents for that lot, but if the lot is made 5,000 or 6,000 they want 55 cents per barrel—a difference of 20 cents a barrel, according to the size of the lot. The schooner will take 5,000 barrels very comfortably.

Senator ANKENY. If you get such a contract as you contemplate there you propose to ship by schooner, do you?

Mr. LESLEY. If it was permitted. But under those specifications we are absolutely excluded from both those propositions.

Senator ANKENY. I understand now; but what is the remedy that you want? Your privilege to ship by schooner?

Mr. LESLEY. Yes, sir.

Just one more thing before I stop, for a moment, in connection with this last letting of cement, which was on the 19th of March. I have a letter dated March 30, from the traffic manager, where he makes a tariff of $4.50, to take effect immediately after this letting on the 19th, or every element of a midnight tariff that I have ever been able to see. In other words, we were asked up to the 19th to bid on a rate of $5 a ton, and here is a letter showing that up to the 19th, which was on a Saturday, I think, the freight was $5 a ton, and that is what we were up against in bidding, and on the 21st the new rate became effective, immediately after the letting. That helps the American producer, likewise! This information is furnished in a letter from Mr. Walker, a copy of which will be found at the end of the statement that I have submitted to the committee.

The ACTING CHAIRMAN. What reason do you give for the condition that you have just stated?

Mr. LESLEY. I have no reason to give. I do not think that there is any willful intention to do anything wrong on the part of the Government or the Commission. I think it is just one of those things that happen, possibly, with a number of officers in different lines, without any direct purpose, probably, who have done these things, each man intending to get what he wanted, without relation to a homogeneous whole. I do not believe that the Government meant to do what I have indicated. I do not believe there was any deliberate intention or malice, but that it happened because of a lack of concentration or purpose with relation to all the things to be accomplished.

Senator TALIAFERRO. How do you account for the repetition of these objectionable specifications, these unfair specifications, from your point of view, after the attention of the purchasing agent had been called to the facts?

Mr. LESLEY. I do not believe I can account for it, sir.

Senator TALIAFERRO. I wish I could get your expression in the record. [Laughter.]

Mr. LESLEY. I would rather not express an opinion. I try to be straight and fair, and I have nothing to say on that subject. I do not want to give guesses.

Senator MORGAN. It might possibly have all come through a desire to make the income of the railway and these steamers very large?

Mr. LESLEY. That would be one way.

Senator MORGAN. That is all the income the United States gets out of this establishment at the present time.

The ACTING CHAIRMAN. The United States secured no income from the cement shipped from the old country?

Mr. LESLEY. None whatever. It is all dead loss.

The ACTING CHAIRMAN. That came in the British steamers?

Mr. LESLEY. That came by the Hamburg-American Line, for one line, and another, the Royal Mail Steam Packet Company, running between London and Colon fortnightly. We did not derive a cent by those shipments; nothing whatever.

Senator DRYDEN. I have been unavoidably prevented from being here during Mr. Lesley's testimony, and I would like to ask whether the matter of making cement on the Isthmus has been taken up?

Senator MORGAN. It has not been taken up this morning.

Senator DRYDEN. It has not?

Senator MORGAN. No. I would have taken it up, but the specimens that Mr. Shonts was requested to have General Hains bring up have not yet been received. At least, I suppose they have not. We have had no notice of them. I propose, when they come, to have chemical analysis made of that indurated clay that they have there, to see whether it is cement rock, or whether it would do.

Senator DRYDEN. If the matter has not been taken up, I would like to ask Mr. Lesley why cement can not be manufactured right on the Isthmus at a great saving to the Government?

Mr. LESLEY. I would say that there is no reason, except one. I do not believe that the Government should manufacture the cement on the Isthmus. I believe individual enterprise is better than Government manufacture. I think that has been rather proven in a Government enterprise in connection with the Irrigation Bureau. They have been very slow and have produced very little cement. I think it is rather an experimental thing to take a new brand of cement and risk a tremendous piece of work on that. That would be my theory.

Senator DRYDEN. Do you know whether there is material on the Isthmus out of which good cement could be made?

Mr. LESLEY. I believe this: Years ago, when the Nicaragua plan was up, I had some experts, who brought me materials from the west coast of Nicaragua, and there was some limestone out of which, I think, cement could be made. At that time oil on the Pacific coast, I think, had not been discovered, and the proposition as a cement-making proposition was turned down because there was no fuel. Fuel represents a very large amount of the cost of cement.

Senator DRYDEN. If the Government itself did not go into the manufacture of cement, could not private enterprise manufacture the

cement on the Isthmus and sell it to the Government at a less cost than it would cost them to get it from the United States?

Mr. LESLEY. I believe that that will be a purely commercial question. I believe investigations are being made now on those lines, and I think that the whole problem will work itself out on the line of a demand and a supply at the lowest price to meet the demand.

There is this to be considered: On all important work there is generally a clause that the cement must have been three years in use before it can be allowed to be used. That is the Government requirement, and I think they should adhere to that on this great work.

Senator MORGAN. That it should be three years in use before it was used by the Government?

Mr. LESLEY. Yes; it must have a reputation of having stood for three years in a public work of some kind.

Senator MORGAN. If the cement that is used by the Government varies 3 per cent from the formula, and the cement that is offered for sale to the Government varies 2 per cent, that would settle that question, although it had not been used three years?

Mr. LESLEY. The general opinion is that cement is like a man—it has got to show its character by its life, and not by its analysis.

Senator MORGAN. If that is so, we had better not use any, because it would be under water, and the structure will be completed, and we would not know whether it was going to go to pieces, because it would not be three years old when it was put in.

Mr. LESLEY. I do not mean that, Senator. I mean the brand of cement must have been used three years. It must be the product of a particular mill, the cement from which has been used for three years. Each of these mills has a brand, such as the Atlas, Vulcanite, Lawrence, and so on, and each mill has a product sold under its brand. The Government says: "Before we will use a cement on an important piece of work you must show that your cement has a brand and has been in the market for three years, and has stood under similar climatic conditions or on a similar character of work to that for which you offer it."

Senator DRYDEN. That is an old rule of the Government?

Mr. LESLEY. Yes, sir.

Senator MORGAN. Is it a law or a regulation?

Mr. LESLEY. It is a regulation of the army engineers.

Senator MORGAN. That was probably put in by some engineer who was afraid to trust chemistry and who wanted to draw on experience.

Mr. LESLEY. A good many engineers out of the Army have put it in, too, I think. It is very fair.

I think that is all I have to say, gentlemen.

The ACTING CHAIRMAN. As I understand, gentlemen, Mr. Lesley's statement is the only one that you desire to have made?

Mr. ACKERMAN. Yes, sir.

(The committee thereupon adjourned.)

(By order of the committee, the following papers are printed in connection with the statement of Mr. Lesley:)

Argument on behalf of the Association of American Portland Cement Manufacturers, in reference to the purchase of American materials for use in the construction of the Panama Canal.

THE POSITION OF THE PANAMA CANAL COMMISSION.

The position of the Panama Canal Commission in this matter is stated in letter by the secretary, Joseph Bucklin Bishop, under date of April 16, 1906, copy of which is appended herewith. This letter states that the last purchase of Portland cement for the canal was of foreign Portland cement; that the lowest bid received on American cement was 37 cents higher than the lowest bid on foreign cement, and that 20,000 barrels purchased would have cost $7,400 more, if the use of foreign cement had been prohibited, and that "the policy of the Commission was, if the prices had been anything like equal, home concerns would have been favored."

In his testimony before the Senate Interoceanic Canal Committee, as reported in the New York Evening Post, Secretary Taft, being interrogated as to the purchase of American material for use on the canal, stated: "The policy of the Government was to build the canal as cheaply as possible, buying materials in the open market" (regardless of the fact whether they were manufactured in the United States or not).

In reply to a question by Senator Dryden he said further: "The question now is the duty of the Executive to decide where purchases shall be made, and if Congress does not take any action, it will be understood that the decision is to pursue the course I have laid down, namely, open-market purchases.

"Would you prefer action by Congress?" inquired Senator Dryden.

"I would much prefer to have Congress legislate," replied Secretary Taft.

The above two statements summarize, so far as is known, the position of the Panama Canal Commission and the Government in reference to purchase of American material for use in the construction of the Panama Canal work, and it is not in criticism of this action, but in furtherance of the Secretary of War's preference that Congress should legislate, that this committee appears before your honorable body to show why it is the duty of Congress to legislate in favor of American materials, and why such legislation will procure the cheapest materials and enable the Government to build the canal as "cheaply as possible."

WHO ARE INJURED BY THE OPEN-MARKET PURCHASES.

First. The American manufacturer, American labor, and other American interests who depend upon the production of materials in this country.

Second. American coastwise commerce, interchange of American commodities with South American republics.

FACTS THAT MAY BE ADMITTED.

First. That there is no duty on materials entering the Panama Canal Zone and intended for use in the construction of the isthmian canal.

Second. That the only direct steamship line from New York to Colon is the Panama Steamship Line, directly controlled by the Isthmian Canal Commission.

Third. That American Portland cement is in every respect, so far as quality is concerned, the equal of any Portland cement manufactured in the world.

HISTORY OF THE LETTING OF PORTLAND CEMENT CONTRACTS FOR THE PANAMA CANAL.

The first specifications for Portland cement for the Panama Canal, issued October 20, 1904, specified "American Portland cement," and bidders were asked to name the price delivered at Colon—

(*a*) "Shipped by way of New York by Panama Railroad steamers, with freight from New York to Colon paid by the Commission," or

(*b*) "Shipped from any convenient port, freight and all other charges paid by the bidder."

At this letting there were nine bidders, all American, and the contract went to an American manufacturer.

Circular No. 268, of August 23, 1905, of the Panama Canal Commission called for a proposal on 20,000 barrels of "Portland cement," and—

(*a*) Stipulated "Portland cement," leaving the word "American" out;

(*b*) "Delivery only by steamship."

At this letting ten bids were received, five of which were for foreign cements; and the contract went to a foreign cement manufacturer, at 37 cents per barrel less than any American tender.

(This is the letting referred to in Mr. Bishop's letter.)

Circular No. 301, on which bids were received on March 19, 1906, "Portland cement" is asked for, the word "American" being again omitted, and it is specified that all articles are to be delivered C. I. F. on dock (by steamer) at either Colon or La Boca.

At this letting nine bids were received, all of which were for foreign cement.

It will be noted from the above—

First. That the word "American" has been stricken out in the two latter specifications.

Second. That shipments must be made by steamer.

AMERICAN FREIGHT RATES.

The only direct steamship line from New York to Colon is that controlled by the Isthmian Canal Commission, and in the specifications of that Commission the deliveries of cement are in such small lots that no contractor would charter a steamer for so small a shipment as 600 tons of cement at a time—the amount required—and thus the American manufacturer to make deliveries, is limited—on the Atlantic coast, at least—to a single line of steamers doing a general

business, which line is controlled by the Isthmian Canal Commission. This line names the arbitrary rate of $5 a ton of 2,000 pounds on cement, to apply on the requisition covering delivery of cement up to December, 1906. This is at the rate of $1 per barrel.

It will be noted in these latter specifications, deliveries by schooner or other coastwise vessels sailing under the United States flag, and doing business along the coast of the United States, handling materials in small lots, are excluded, and the deliveries must be made by steamers from this country, thus limiting practically the delivery of cement on these latter contracts to shipments on a line of steamers controlled by the Isthmian Canal Commission.

FOREIGN FREIGHT RATES.

There are a number of lines of steamers running from England, Belgium, Germany, etc., touching at Colon, carrying general cargoes to South American ports, and on these steamers rates as low as 60 to 68 cents per barrel on Portland cement can be made, though the distance is about double that from New York to Panama. Further than this, tramp steamers going to South American ports from Europe for return cargoes have named rates for delivery of cement at Colon as low as 45 cents.

THE FREIGHT SITUATION.

Thus, on the question of freights from the United States for American goods, destined for American work and to be paid for by American money, an American line of steamers controlled by the Isthmian Canal Commission, created by an American Congress and operated under this American Commission, names a rate so high as to practically exclude American materials from any competition whatever, and the Commission controlling this steamship line names the specifications, so as to exclude all American coastwise sailing commerce from any competition with its own line, and permits foreign steamers to land at its docks and deliver foreign goods to the exclusion of the American product in American bottoms.

Further than this, it will be noted by the letter of the Panama Steamship Company (filed herewith) that the Isthmian Canal Commission, a branch of the United States Government, or the Panama Steamship Company, which it operates, is actually doing everything which the railroads of the country, operated by individual owners, are alleged to be doing, to the injury of the public.

The last letting of cement for the Panama Canal was March 19, 1906. Under the discriminating clauses limiting the size of cargoes to lots too small for the chartering of a steamer, and under the discriminating clauses excluding any deliveries except in steamships, it will be noted that at that time by the terms of the specifications, the Isthmian Canal Commission drove American manufacturers to make their bid based upon a freight rate of $5 a ton, which was the rate exacted by the single line running to Colon, which line was controlled by the Isthmian Canal Commission.

It will be noted further, by the same letter, that the rate made to American manufacturers, up to and including March 19, the day on which the bids were closed, was $5 a ton, and that immediately thereafter (namely, March 21) this line of steamships, controlled by the

Isthmian Canal Commission, made practically a "midnight tariff," reducing the rate to $4.50 a ton, at a time when it was too late for American manufacturers to avail themselves of it, and when it was thus directly discriminating in favor of foreign manufacturers.

As has been shown above, foreign freight rates from London to Colon, 4,742 miles, and Hamburg to Colon, 5,049 miles, average from 45 to 70 cents a barrel, as against the issued rate of $1 a barrel by the Panama Steamship Line. The distance from New York to Colon is 1,972 miles, or less than half the distance.

Assuming that the Panama Steamship Line, managed by the Isthmian Canal Commission, a part of the Government, could transport freight half the distance and make a profit at the same rate that foreign vessels could carry double the distance and make a profit, the result would have been that, assuming that the American steamers charged 57 cents a barrel instead of $1, thus meeting the average of foreign freights, there would have been a profit to the Panama Steamship Line—

By its freight rate of $1 per ton, of	$8,600
Against a loss by the purchase of American cement, as per Canal Commission letter of Mr. Bishop, of	7,400
Thus showing a profit to the Isthmian Canal Commission, through its steamship line, of	1,200

had the purchase of American materials been made and proper rates been made to American shippers, to say nothing of the gain to the country by fostering its industries.

SUMMARY OF THE CASE.

Summing up this matter, it may be divided into two branches:

Quality of American Portland cement.—The Isthmian Canal Commission is under the control of the War Department. The United States Army engineers, who are doing all the important work for the War Department, specify "American Portland cement" for all their work. The Isthmian Canal Commission, composed of distinguished engineers, at their first letting specified "American Portland cement." This seems to settle the question of quality, American Portland cement being equal to any Portland cement in the world.

Exclusion due to high freights.—Assuming the quality to be as stated, the enhanced cost of American Portland cement on the Isthmus of Panama is due to the discrimination by the Isthmian Canal Commission against American articles, by—

(*a*) Striking the word "American" out of the specifications; and

(*b*) By limiting the deliveries to steamers and naming over its own line an arbitrary freight rate, working directly in the interests of the foreigner.

CONCLUSION.

In conclusion, upon this state of facts, it may be said that not only has the American manufacturer, paying for American labor with American money, the right to be afforded an opportunity to supply material upon a work done by the American Government with American money, for an American canal, through an American Isthmus, but further, the American coastwise commerce is entitled to an oppor-

tunity to competition, for the delivery of the shipments of American cement upon this work, on fair terms with European vessels.

It is respectfully urged that in making appropriations to the Canal Commission for future work, that the same be limited to be expended only for material of American manufacture, and shipped in American vessels (sailing or steam).

PHILADELPHIA, PA., *April 24, 1906.*

WASHINGTON, D. C., *April 16, 1906.*

SIR: In the absence of Mr. Shonts, I have the honor to acknowledge the receipt of your letter of the 16th instant, transmitting a communication from the Hon. William Lorimer, dated the 10th instant, inclosing a letter from the Chicago-Portland Cement Company, bearing date April 2, 1906, with reference to the last purchase of Portland cement by the Isthmian Canal Commission on October 7, last.

When the lot of cement in question was purchased a number of bids were received on American cement and a number also on foreign cement. The lowest bid received on American cement was 37 cents per barrel higher than the lowest bid on foreign cement. After full investigation and test the lowest bid was accepted and the cement furnished on the contract has proven to be very satisfactory. As the quantity of cement purchased at that time was 20,000 barrels, you will note that this lot of cement would have cost $7,400 more if the use of foreign cement had been prohibited.

The statements made in the communication from the Chicago Portland Cement Company as to the desirability of purchasing materials needed in the construction of the canal as far as possible in the United States are fully appreciated, and where prices have been anything like equal home concerns have been favored.

I think you will agree, however, that in the case of the lot of cement in question the Commission would not have been justified in paying $7,400 more for American cement than for foreign cement, particularly in view of the fact that there was no doubt as to the quality of the foreign cement being fully equal to that offered by the lowest bidder on American cement.

Very respectfully, JOSEPH BUCKLIN BISHOP,
Secretary.

Hon. A. J. HOPKINS,
United States Senate, Washington, D. C.

PANAMA RAILROAD COMPANY,
New York, March 30, 1906.

UNITED BUILDING MATERIAL COMPANY,
320 Broadway, New York.

DEAR SIRS: In reply to your inquiry of even date regarding rate on cement from New York to Colon, we beg to say that the present figure by our line is $4.50 per ton of 2,000 pounds. This rate became effective on the 21st instant. The rate from December 31, 1905, to March 31 this year was $5 per short ton.

Yours, truly, R. L. WALKER,
Traffic Manager.

SOME STATISTICS OF THE CEMENT INDUSTRY IN AMERICA.

[By R W. Lesley, vice-president American Society for Testing Materials.]

I have been asked to give you in very brief form a few figures on the growth of the American Portland cement industry, with which I have been connected for many years. Of course much of what I have to say is ancient history, because it is only ancient history from which diagrams can be made; and as the principal part of what I have to say to you to-day consists of diagrams, you can understand that ancient history is the essential part of my discourse.

The American Portland cement industry is one of the remarkable developments of the past twenty years; in fact it might almost be said of the past ten years. The words "cement" and "concrete" to-day seem to the engineer almost as familiar as iron and stone, so far as construction is concerned, and the engineering papers are filled with articles of the most interesting character, describing the various forms of concrete and reinforced concrete construction, and yet it is quite within the knowledge of the writer in his early cement days that to find a single paragraph in the scientific papers of this country, or even of England, referring to this subject was the occasion of more or less rejoicing.

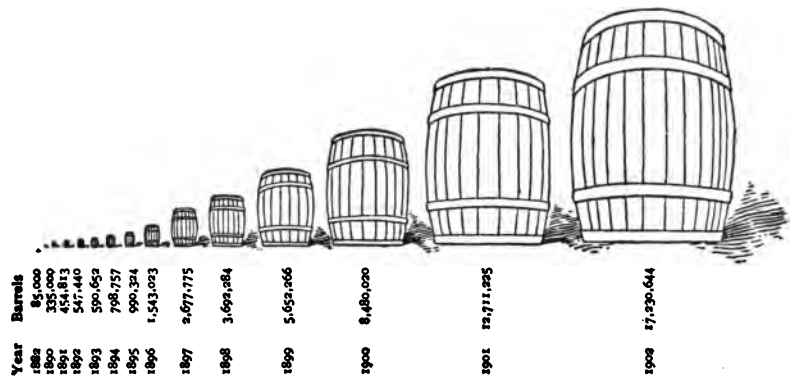
When we talk of the consumption of an article, the use of an article, and the growth of an industry, we may generally find that along parallel lines will be the growth of the literature of the subject. This is one of the interesting developments of the growth of the industry to those who have been for years connected with it.

In speaking of this subject I want to call your attention to a diagram showing, by the comparative height of a cement barrel, the growth of the American Portland cement industry. These figures speak for themselves, and if the table were brought up to the present period by adding the year 1903, for which values are soon to be published, the results would be even more remarkable. These barrels pictorially tell the tale of the development of the industry, and emphasize more than words could what American manufacturers have been doing.

It will be remembered that in the seventies practically all the Portland cement consumed in the United States came from abroad, and that foreign cement, especially the German and English brands, had a reputation which it was difficult to overcome and commanded the market for all large work. The difficulties of the establishment of American Portland cement have been told in other papers by the writer, and it is needless to repeat them here; but the diagram which follows shows for the past twenty years the relation of the American production to the imports of foreign cement, and how gradually American production has overtaken importation, until the latter bears but a small percentage to the enormous consumption of Portland cement in this country. This table shows the domestic production and imports of Portland cement from 1882 to 1902.

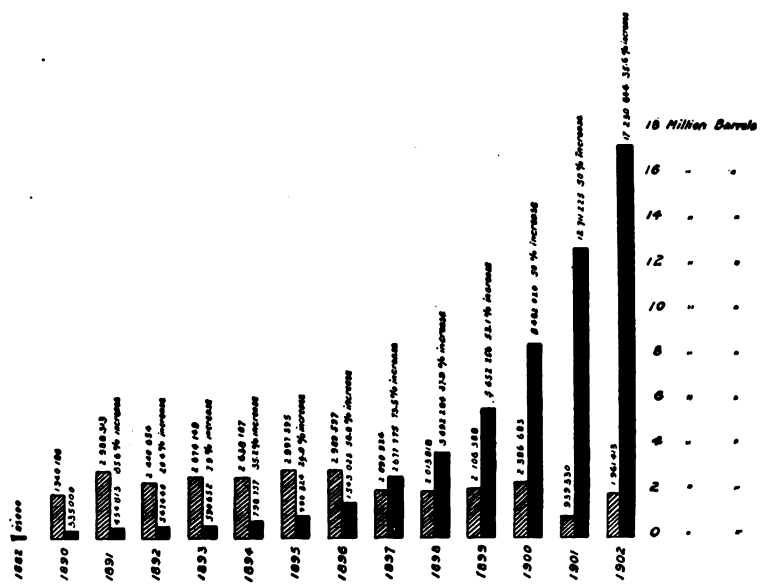
At the beginning of this period we made 17,000 tons of Portland cement and about a million tons of natural cement, and imported about 74,000 tons of Portland cement. Until 1897 the production of American Portland cements was much less than the foreign importations, but in that year it forged ahead rapidly. This growth was due to a number of causes, of which an important one was the sudden realization by engineers that there was nothing to prevent the manufacture

of good Portland cement in this country except their refusal to buy it. About that time specifications were recast so as to accept material made in this country which was of satisfactory character. When users of



THE GROWTH OF THE AMERICAN PORTLAND CEMENT INDUSTRY AS SHOWN BY THE COMPARATIVE HEIGHT OF A CEMENT BARREL.

cement found how easily their requirements were met by American producers, they began to call for finer grinding than before, higher tensile strengths, and other properties. These specifications improved the quality of the American product until to-day it is the equal of that



NOTE.—Hatched lines represent imports; solid lines represent domestic production.

COMPARATIVE DIAGRAM SHOWING DOMESTIC PRODUCTION AND IMPORTS OF PORTLAND CEMENT.

of any country. Under such conditions it is not surprising that the foreign imports have fallen off materially of late.

Portland cement, however, is not the only cement that this country produces, because since the early days of canals the United States has

been one of the great producers of natural cement, and much important work has been done for years with such good cements as those made in the Cumberland, Lehigh, Louisville, and Milwaukee cement districts. These were the first cement works of the country, and an examination of the census report for 1850 shows there were 35 cement works in the United States, all making natural cement, and having a daily capacity of 14,500 barrels.

The following table shows the relation of natural and Portland cements to each other in this country and the remarkable growth in the annual output per individual cement plant as compared with the early figures of 1850:

Production and consumption of natural and Portland cement in the United States and average productive capacity of American cement mills.

Census year.	Population.	Domestic production, in barrels.	Total per capita, in pounds.	Number of mines or quarries.[a]	Total number of barrels per mill.	Barrels of Portland cement per mill.	Barrels of natural cement per mill.
1850	23,191,876	[b] 509,110	6.5	35	[c] 14,546	.....	14,546
1860	31,443,321	[b] 767,080	7.3	14	[c] 54,790	.....	54,790
1870	38,558,371	[b] 2,033,893	15.8	45	[c] 45,198	.....	45,198
1880	50,155,783	[b] 2,072,943	[d] 13.9	28	[c] 74,084	.....	74,084
1890	62,622,250	7,776,616	[d] 50.2	[e] 79	98,438	20,970	118,113
1900	76,303,387	16,865,539	[d] 80.8	[f] 114	147,940	169,640	130,990
1901	80,000,000	19,796,948	[d] 94.8	[g] 116	170,720	227,000	118,080
1902	81,500,000	25,274,949	[d] 123.7	[h] 127	199,016	265,000	129,750

[a] Establishments.
[b] Estimated from reported valuation at $1 per barrel.
[c] Estimated from reported valuation at $1 per barrel, and assumed to be all natural rock cement.
[d] Includes imports.
[e] Portland, 16; natural, 63.
[f] Portland, 50; natural, 64.
[g] Portland, 56; natural, 60.
[h] Portland, 65; natural, 62.

These figures show that in 1850 there were 35 cement mills in the country, all making natural cement and having an average annual capacity of 14,500 barrels a year. In 1890 there were 16 Portland cement mills of an average capacity of 21,000 barrels, and 63 natural cement mills with an average output of 98,400 barrels. In 1902 there were 65 Portland cement mills averaging 265,000 barrels, and 62 natural cement mills averaging 199,000 barrels.

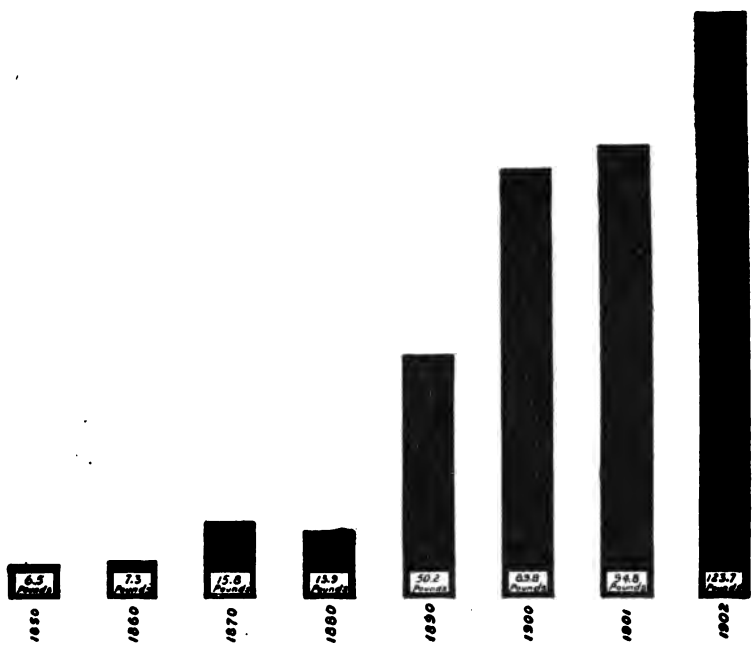
From the above an excellent opportunity is afforded of comparing the relation of the natural cement industry to the Portland cement industry in this country, and, when taken in connection with the foregoing table of imports of foreign cement and manufacture of American Portland cement, give an excellent idea of how Portland cement of American manufacture is gradually taking the place of all other cements in this country.

Still more marvelous is the growth in the consumption of natural and Portland cement per capita in this country. In 1850, when construction based on scientific principles was in its early days, each citizen required an average of 6.5 pounds. Just before the civil war about 7.3 pounds were enough. In 1870, when things were doing well generally, 15.8 pounds were ample. In 1880, after the Northern Pacific episode, when construction was checked, the necessities of the average citizen fell to 13.9 pounds. In 1890, however, people were

realizing that permanent construction was desirable, and 50.2 pounds were required. By 1900, 89.8 pounds were necessary, and in 1902 this figure rose to the surprising total of 123.7 pounds.

In addition to the fact of this great consumption in the United States and of the fact of the decrease in imports, it is an additional source of gratification to American manufacturers to know that the imports of Portland cement to the United States during the present year 1904 are not likely to exceed 500,000 barrels, an amount just about equal to American exports of Portland cement.

The figures above practically show the condition of the trade in this country, but for purposes of comparison for those who are looking into the production of Portland cement as a world industry it may be stated that this country to-day has a producing capacity of nearly



PER CAPITA CONSUMPTION OF NATURAL AND PORTLAND CEMENT FROM 1850 TO 1902.

30,000,000 barrels, and, according to the best figures obtainable for the year 1903, actually produced 21,000,000 barrels, all of which was used here. Germany, which is recognized as the leading world's producer, had in 1903 a capacity of 30,000,000 barrels, sold about 20,000,000—of which 4,500,000 were exported—leaving the consumption of Germany about 15,000,000 barrels, as compared with the consumption of this country of 21,000,000 barrels of American manufacture and 2,500,000 barrels of imported manufacture, and about 500,000 barrels of slag cement, a total of 24,000,000 barrels. It is thus seen how fast our country is coming to the front as a great consumer of Portland cement.

In connection with all the foregoing, it may be stated that most of these important results are due to American engineers and their faith

in the American product, and much more will be due to our own society, by reason of the care and attention it has given to the preparation of standard specifications for Portland cement. These specifications which are before our body to-day have been prepared by a joint committee, composed of representatives of the American Society for Testing Materials, American Society of Civil Engineers, American Railway Engineering and Maintenance of Way Association, and the Association of Portland Cement Manufacturers, under Prof. George F. Swain as chairman.

Needless to say, the task has been long and arduous, but it is hoped not a thankless one. It is the belief of the writer that when specifications for Portland cement have become standardized in this country, as they will certainly become through the work of our society, there will be no limit to the growth of the industry. The standardization of specifications will allow manufacturers to produce a more uniform and regular and, by the very fact of standardization, a cheaper article, and consumers will have an article of the best quality, thoroughly governed in its production, and one which will in the next period of our growth prove the cheapest and safest of building materials.

ISTHMIAN CANAL.

COMMITTEE ON INTEROCEANIC CANALS,
UNITED STATES SENATE,
Washington, D. C., Tuesday, May 1, 1906.

The committee met at 10.30 o'clock, a. m.

Present: Senators Millard (Chairman), Kittredge, Dryden, Morgan, and Simmons.

TESTIMONY OF RICHARD L. WALKER, ESQ.

Mr. WALKER was duly sworn, and testified as follows:

The CHAIRMAN. Please give your name and address, Mr. Walker.

Mr. WALKER. Richard L. Walker; 52 Cambridge place, Brooklyn, N. Y.

The CHAIRMAN. And your present occupation?

Mr. WALKER. Traffic manager of the Panama Railroad Company.

The CHAIRMAN. And in what way were you employed before you became traffic manager of that road?

Mr. WALKER. For a year and eight months I was manager of Downing's American Dispatch.

The CHAIRMAN. In New York?

Mr. WALKER. Yes, sir.

Senator SIMMONS. What is that? What is the business of Downing?

Mr. WALKER. R. F. Downing are custom-house brokers and forwarding agents in New York, and the particular business that I had charge of was the making of through rates from points in Europe to points in the interior of the United States, by combining the transportation charges in Europe with the ocean carriage to New York or Boston or Baltimore or other ports, and the railroad rates from the coast to the interior.

The CHAIRMAN. Prior to that time what was your occupation?

Mr. WALKER. Prior to that time for twenty-three years I was with the Ocean Steamship Company, of Savannah, which is a corporation that belongs to the Central Railroad of Georgia.

The CHAIRMAN. Were you stationed then in New York?

Mr. WALKER. Yes, sir. For eight years I was the New York managing agent.

The CHAIRMAN. And now you have charge of the regular transportation of the Panama Railroad?

Mr. WALKER. Yes, sir.

The CHAIRMAN. Of the traffic on that road?

Mr. WALKER. Yes, sir.

Senator MORGAN. Have you charge of the traffic arrangements of any other company?

Mr. WALKER. No, sir.

Senator MORGAN. How long have you been connected with the Panama Railroad?

Mr. WALKER. I am in the ninth year; eight years and a little over.

Senator MORGAN. Who was your predecessor in that office?

Mr. WALKER. John Muir.

Senator MORGAN. Had he served the company for a long time?

Mr. WALKER. I think about four years. No; I think it was two years—from 1895 to 1897.

The CHAIRMAN. Do you regulate the traffic on the ships, as well as the road?

Mr. WALKER. Yes, sir.

The CHAIRMAN. You have charge of both?

Mr. WALKER. Yes, sir; the whole thing.

The CHAIRMAN. Senator Morgan, you might proceed with Mr. Walker, if you are ready.

Senator MORGAN. I had supposed that one of you commercial gentlemen at the head of the table would take up these matters with Mr. Walker.

The CHAIRMAN. I do not know just exactly how to proceed in this particular case.

I had always understood that the ship business was separate from the Panama road.

Mr. WALKER. It is just one corporation—the Panama Railroad Company.

The CHAIRMAN. The ships are included in the property?

Mr. WALKER. The ships are owned by the railroad company.

Senator KITTREDGE. Do you know about the cost of doing business across the Isthmus on the Panama Railway?

Mr. WALKER. Well, of course, you know my information in that is secondary. I get it through the auditors, and they give me the figures. The cost of railroad transportation on the Isthmus is about $3; $3.06, I think.

Senator KITTREDGE. That is the statement made by Secretary Taft.

Mr. WALKER. Yes. I got it at that time. He asked me for it, and I hunted it up in the records.

Senator MORGAN. Three dollars a ton?

Senator KITTREDGE. Three dollars and six cents per ton. Is that right?

Mr. WALKER. Yes, sir.

Senator KITTREDGE. How does that compare with the cost of railway transportation in this country?

Mr. WALKER. Well, it is very, very high. Our equipment down there is old fashioned; small cars, small locomotives. They can not carry many tons per train. The cars have only been able to carry about 12 tons each, and then there is that franchise tax, that puts a big cost in there. I figure that out about, on an average, 67 cents a ton on the commercial freight that we handled last year.

Senator KITTREDGE. By "franchise tax" you mean the amount——

Mr. WALKER. The $250,000 a year that was paid by the contract to Colombia.

Senator MORGAN. Twenty-five thousand dollars to Panama, and $225,000 to Colombia?

Mr. WALKER. Yes, sir.

Senator KITTREDGE. Can you give us the average cost of transportation in this country?

Mr. WALKER. No, sir.

Senator MORGAN. I would like to know one thing that I do not know anything about. What do you call a ton, say of fine merchandise? Do you call it a ton in weight or a ton by measurement?

Mr. WALKER. We divide the ton weight and the ton measurement, not by the quality of the goods, but by the fact of whether 2,000 pounds measure more than 40 cubic feet or less; and on European business they use the long ton of 2,240 pounds. So that in quoting a rate to all of our territory, except the Pacific coast of the United States, we say ton weight or measurement. Then, if we get the most money by charging for 40 cubic feet, we charge the ton that way. If the most money comes by charging for 2,000 pounds or 2,240 pounds, we charge that way.

Senator MORGAN. I was merely trying to get some information about it. I did not understand.

Mr. WALKER. It is a very difficult thing for anybody to understand that is not in the steamship business. I see every time we have to do with a railroad man he gets all mixed up on it.

Senator SIMMONS. If you had proper modern equipment, would there be any greater cost for transportation over the Isthmus on the line of this road than there is in this country, except this sixty-six one-hundredths cent that you speak of, due to the subsidy?

Mr. WALKER. It seems to me that the cost of railroad transportation in a tropical country is always going be more than it is in the United States, or in the northern part of the United States any way.

Senator SIMMONS. Why?

Mr. WALKER. Because the labor is not so efficient. You have got to hire a great many more men. The wages of each man may be less. I know, when I was with the Savannah Line, the cost in Savannah was high as compared with the cost in New York, because they had to use so many more men to do the same work that they would do in New York.

The CHAIRMAN. If you were operating a road here for the same distance as that, say, 40 or 42 or 43 miles, would not that add very materially to the cost here?

Mr. WALKER. Yes; because the expenses for the terminals there would be the same, whether your road was a long haul or a short haul.

The CHAIRMAN. I should think the short haul would make the cost a great deal more than where there was a long haul.

Mr. WALKER. Certainly.

Senator MORGAN. To prosecute my inquiry just a little further, as I want to understand it better; 40 cubic feet is regarded as a ton?

Mr. WALKER. Yes, sir.

Senator MORGAN. That is, by measurement?

Mr. WALKER. Yes, sir.

Senator MORGAN. And if the material that occupies 40 cubic feet is more than a short ton, 2,000 pounds, why, you charge for the weight?

Mr. WALKER. Yes, sir.

Senator MORGAN. And if it is less, you charge for the measurement?

Mr. WALKER. Yes, sir.

Senator MORGAN. That simplifies it. And the European people, or the English people, use the long ton. How many feet does that occupy?

Mr. WALKER. They use the same thing, 40 cubic feet for a 2,240-pound ton.

Senator MORGAN. And if the material weighs over 2,240 pounds, they charge as you do on this side?

Mr. Walker. Yes, sir. In fact, in Germany there is another difference. They use the 1,000 kilos, which is 2,204 pounds.

Senator MORGAN. Yes.

Senator SIMMONS. How many tons did you say the average car carried in Panama?

Mr. WALKER. The little cars that we have been using would hold 12 tons.

Senator SIMMONS. What does the average car hold in this country?

Mr. WALKER. They are building cars very large now. Some of them will carry 50 tons. They have put some heavy flat cars down in the Isthmus recently, that will carry 40 tons.

Senator SIMMONS. Have they made any change at all in the character of the engines that they are using down there?

Mr. WALKER. They are getting new engines down there now.

Senator SIMMONS. New engines and larger cars?

Mr. WALKER. Yes, sir.

Senator SIMMONS. What has caused the delay in superseding this old equipment?

Mr. WALKER. I do not know.

Senator MORGAN. Now, Mr. Walker, through the changes in circumstances and conditions, the United States is to-day, through the medium of the Panama Railroad, carrying on traffic arrangements with a number of lines, as I understand it?

Mr. WALKER. Yes, sir.

Senator MORGAN. And those traffic arrangements were explained by Mr. Drake here, who gave us a sample of bill of lading and also a sample of a traffic contract—the old one.

Mr. WALKER. Oh, the contracts that we had with the Pacific carriers?

Senator MORGAN. And with others, too. Those arrangements are now conducted by current correspondence?

Mr. WALKER. Yes, sir.

Senator MORGAN. Rather than by settled agreements?

Mr. WALKER. Yes, sir; by the exchange of letters.

Senator MORGAN. I would like to have you state consecutively, and in your own way, what arrangements the United States is bound by in consequence of its connection with this traffic of the Panama Railroad.

Mr. WALKER. The corporation of the Panama Railroad is bound to accept all the cargo that is brought to us by the lines with which we have through-billing arrangements on one ocean, to carry it promptly across the Isthmus, and deliver it to the carrier beyond for transportation to destination.

Senator MORGAN. This obligation to accept the cargo obtains and is in force only at the Isthmus? You do not have the same obligation in New York?

Mr. WALKER. I think, as a common carrier, we are bound to take all cargo that is tendered to us in New York by any line bringing it into New York or any individual in New York; that is, the steamship line.

Senator MORGAN. But do the traffic arrangements bind you to take from other lines of steamships or other ships all the cargo they may bring, and that you will carry it across the Isthmus on the basis of the traffic percentage?

Mr. WALKER. With the lines with which we have these through-billing arrangements; yes.

Senator MORGAN. That is the point?

Mr. WALKER. Yes.

Senator MORGAN. That is effected by through-billing arrangements?

Mr. WALKER. Yes; we have to arrange a through-billing arrangement, because the freight is always prepaid outward and collected homeward.

Senator MORGAN. Yes.

Mr. WALKER. I speak of Europe or New York as "homeward."

Senator MORGAN. It is paid and collected at the home port?

Mr. WALKER. Yes; except the San Francisco business or the Pacific coast business; and there the inititial carriers will trust the final carriers to make the collections.

Senator MORGAN. The rate of charges that prevails and is universal, I think, in these allied companies, transporting companies, is 25 per cent of the charges for freight upon the cargo that crosses the Isthmus in either direction, if I understand it.

Mr. WALKER. Well, that is not exactly that way. It differs. The initial carriers publish tariffs, and they also have authority to make special rates, down to a certain minimum, and on freight from Europe to Panama, for delivery from Panama to consumers, the division of the through rate is 45 per cent to the railroad and 55 per cent to the steamers.

On freight from Europe to ports of the South Pacific beyond Panama the through rate is divided so as to pay the railroad company 25 per cent. On freight from Europe to Central America the railroad gets 23⅛ per cent. On freight from Europe to Mexico it is 25 per cent. From Europe to San Francisco it is 24⅜ per cent. The rates from New York to the South Pacific divide 38 per cent to the steamers beyond Panama and 62 per cent between New York and Panama. Now, we subdivide that 62 per cent—55 to our steamers and 45 to the railroad company; and we allow the same divisions to apply on business from New York by the Atlas Line—that is, the Hamburg-American Packet Company—and the Royal Mail Steam Packet Company. And from New Orleans the divisions are the same with the United Fruit Company.

Senator MORGAN. The different percentages that you have just named are obligatory upon the United States?

Mr. WALKER. For ninety days.

Senator MORGAN. They can be changed at the end of ninety days by either party?

Mr. WALKER. Yes, sir; by mutual agreement.

Senator MORGAN. And they can be abandoned by either party without a mutual agreement?

Mr. WALKER. Yes; that is, you would have to give ninety days' notice.

Senator MORGAN. You would have to give ninety days' notice of the abandonment of the agreement?

Mr. WALKER. Yes.

Senator MORGAN. And what takes place after that is by mutual agreement?

Mr. WALKER. Yes; or by arbitrary action on the part of the railroad.

Senator MORGAN. When you come to state the different lines with which these through-billing arrangements exist, you will state in each case an obligation of the United States entered into by you as traffic manager of the railroad and which is binding upon the Government?

Mr. WALKER. Well, of course, we never express it that way. We use the corporate name, and mention that we make such and such an arrangement with you, and it is written on the letter heads of the Panama Railroad Company; and I suppose most of the people that see that——

Senator MORGAN. The point that I make is this: That the United States, as the owner of everything that belongs to the Panama Railroad Company, is bound by these obligations through your transactions as traffic manager.

Mr. WALKER. The United States owns all the stock of the road, but the United States does not own the bonds. The bondholders have some interest there, I suppose.

Senator MORGAN. That is a very remote interest. They have no control.

Mr. WALKER. They have no control, except if the company did not pay its interest on the bonds the bondholders could come in and proceed against the road.

Senator MORGAN. The United States owes every dollar of the debt that is represented by those bonds?

Mr. WALKER. The railroad company does.

Senator MORGAN. Well, the United States, if it has been subrogated or substituted into all the obligations of the railroad and the ownership of all of its property; there can not be any doubt about the United States being the debtor to the bondholders.

Mr. WALKER. I think that the United States, in the case as it stands at present, is like any other stockholder. It is not liable for anything beyond its own stock. If the United States chose to repudiate the bonded indebtedness, the bond owners could come in and close out the road under a receivership, and sell it, and the United States stock would be wiped out.

Senator MORGAN. When you say it is not liable beyond its own stock, you mean the amount of its own stock in addition to the money that they have paid for the stock? They stand liable to-day to the bondholders for the whole amount of their stock?

Mr. WALKER. If the property was not worth the bonds the United States would not be responsible for those bonds any more than any other stockholder in any railroad is responsible to the bondholders. In other words, if the property is not worth its bonded indebtedness, the holders of bonds can not proceed against the stockholders to make them pay any money.

Senator MORGAN. The bondholders then have no security except the value of the property?

Mr. WALKER. That is all.

Senator MORGAN. And the stockholders are under no liability to pay any money beyond what they have already put into the company?

Mr. WALKER. Not a cent. If I were a bondholder that is what I would think.

Senator MORGAN. You would not like to be a bondholder under those conditions?

Mr. WALKER. With the United States interested in maintaining the property, I do not see any better bonds anywhere than the bonds of the Panama Railroad.

Senator MORGAN. My idea has been all the time, from reading the charter, that after all the property of the railroad company was exhausted in the payment of bonds, still the stockholders would be liable to put up an equivalent amount of their stock in money to meet any deficit.

Mr. WALKER. It is not like national banks. They are the only ones that are responsible, that I know of, for an equivalent to the amount of their stock. A railroad stockholder is responsible for nothing. If the stock is wiped out, he is ended, that is all.

Senator MORGAN. He has got a better show then than the stockholder in the national bank?

Mr. WALKER. Yes, sir. The poor national bank fellows have to put up money equivalent to the amount of their stock.

Senator MORGAN. But you do not think the United States could afford to stand by and see the bondholder paid one-half of his debt only, do you?

Mr. WALKER. No, sir.

Senator MORGAN. And not pay the balance?

Mr. WALKER. No, sir.

Senator MORGAN. So that, in point of fact, it is equivalent to the proposition that the United States would pay in full every bond?

Mr. WALKER. Yes, sir.

Senator MORGAN. With all the interest coupons attached to them, in the event that the sale of the property of the railroad company was not sufficient for the purpose?

Mr. WALKER. I think that the United States would take the moral standard that they should pay the whole thing.

Senator MORGAN. That is one we will never depart from.

Mr. WALKER. Yes, sir.

Senator KITTREDGE. You were speaking a moment ago about the division of freight earnings between different lines?

Mr. WALKER. Yes, sir.

Senator KITTREDGE. Do you make a division of freight earnings as between the steamship and the railway company?

Mr. WALKER. Yes, sir.

Senator KITTREDGE. On what basis?

Mr. WALKER. I mentioned that.

Senator KITTREDGE. I did not hear it.

Mr. WALKER. The revenue between New York and Panama is subdivided between the railroad and the steamship company, 45 per cent

to the railroad and 55 per cent to the steamships; not the steamship company, but the steamships.

Senator KITTREDGE. That is what I mean. Mr. Drake, in testifying the other day, as I understood his statement, told us that the division was 25 per cent and 75 per cent. He is in error about that?

Mr. WALKER. We get 25 per cent, practically, out of all the through business; that is, the business that goes beyond the Isthmus. It is handled by two steamship lines, one on each side, and that through freight is divided, 25 per cent to the railroad; not on New York, but where there are other steamship companies, because we take the whole revenue from New York to Panama, whether it goes beyond Panama or not, and subdivide that, 45 per cent to the railroad and 55 per cent to the steamship company or the steamships. Taking, for instance, New York to San Francisco, the through rate divides 50 per cent from New York to Panama and 50 per cent from Panama to San Francisco. In adjusting the accounts between the railroad and the steamers for the carrying of that, 55 per cent of the 50 per cent goes to the steamship and 45 per cent of the 50 per cent goes to the railroad. In other words, on the business the railroad gets practically 22½ per cent of the through rates from New York to San Francisco.

Senator MORGAN. And the steamship?

Mr. WALKER. And the steamship gets 27½, the two making 50 per cent.

Senator MORGAN. You are speaking, now, of the steamers that belong to the railroad?

Mr. WALKER. The steamers that belong to the railroad.

Senator MORGAN. That is what you are referring to?

Mr. WALKER. They are the only steamers that carry freight between New York and San Francisco. The other steamers that run from New York to the Isthmus are foreign versels and can not engage in the coastwise traffic.

Senator KITTREDGE. Where does the 25 per cent that Mr. Drake mentioned come in?

Mr. WALKER. The 25 per cent that he has in his mind is the general endeavor that we have made to get 25 per cent for the railroad haul from all the steamship lines except our own.

Senator KITTREDGE. Regardless of destination?

Mr. WALKER. Regardless of destination. Our earning, of course, goes up and down according to what the through rate is.

Senator KITTREDGE. Why do you make the division in earnings between the steamship company and the railroad?

Mr. WALKER. Well, of course, I found that in existence when I joined the company. It is customary where a railroad has a steamship line to divide the earnings in order to have each part stand on its own bottom. The Panama Railroad purchased the steamships to run between New York and the Isthmus because they were not satisfied with the service that the Pacific Mail was giving them between New York and the Isthmus. Of course, prior to owning their own steamers they had to allow the Pacific Mail Steamship Company a percentage between New York and Panama, and the fact that they put in their line made them allow their own line about what they used to give the Pacific Mail. Of course that was done before my time, and I am not absolutely certain as to the figures, but that was the principle.

Senator MORGAN. That is a bookkeeping arrangement, in order to make each line of transportation stand on its own bottom?

Mr. WALKER. That is the size of it.

Senator MORGAN. Yes.

Mr. WALKER. Of course the business of the railroad is the transportation of traffic between Colon and Panama and in both directions; and the only reason for their going into the steamship business is to be able to control the through rates in some way. When we had no steamship interest in New York, why we were left at the mercy of all the steamship lines, to take what they chose to give us, pretty nearly. In other words, if we put our rates too high they would not take business. Now we can keep rates between New York and Panama as low as we think fit, and they, to protect their business in Panama, will put their rates down as low or lower.

Senator KITTREDGE. Does the fact that you make this division have any influence upon the rates charged by other steamships plying between New York and Colon?

Mr. WALKER. If we made the division between the railroad and the steamship in such a way as to pay the railroad a very large proportion, no steamship line would compete with us between New York and Panama—that is, in the division of a rate between New York and Panama we must allow the steamships enough to attract other steamships into the business.

Senator KITTREDGE. Does that fact influence the division of rate that you make via the steamship and railroad from New York to Panama?

Mr. WALKER. I do not exactly catch the drift of your question, Senator. I understand what you say, but I can explain it better by a reference.

Senator KITTREDGE. Explain it in your own way.

Mr. WALKER. If we wanted to crush out any opposition line between New York and Panama we would allow the railroad, say, 90 per cent of the through rate and our own New York steamers 10 per cent of the through rate, and tell any other steamships that wanted to go in that all we would give them of the through rate is 10 per cent; and they could not afford to run. Does that answer the question that you wanted to get at?

Senator MORGAN. It does, to my mind, if you will allow me to state what I think the answer amounts to. This arrangement means that you have it in your power as traffic manager—and of course this is not intended as any personal matter——

Mr. WALKER. I understand that, Senator.

Senator MORGAN (continuing): To exclude any steamships from the trade and transportation between New York and Panama by raising the rates on that steamship for goods passing across, if they want to make communication to the other side?

Mr. WALKER. No; I hardly think that is in my power, because the principle is settled by my superior officers.

Senator MORGAN. Well, whoever has it in his power personally, that is what the working of the principle would be?

Mr. WALKER. Whoever has it in his power to fix arbitrary railroad rates across the Isthmus would have it in his power to shut out or to encourage business.

Senator MORGAN. And that power does reside in the board of directors of the railroad?

Mr. WALKER. Yes, sir.

Senator MORGAN. I would like to get a statement from you which I think perhaps will present this thing in a clearer light to laymen. We do not understand these commercial matters. I find it is a very intricate and a very important matter.

Mr. WALKER. I have been thirty-three years in it, Senator, and I find new things pretty nearly every day.

Senator MORGAN. Yes. The distance between London and Colon is about what?

Mr. WALKER. Something like 4,000 miles, I think.

Senator MORGAN. What would be a fair average rate per ton for goods carried from London to Colon on a steamer?

Mr. WALKER. I do not think that I am in a position to answer that. The steamers from London are large carriers, and they make their freight rates, in general, according to the needs of their business.

Senator MORGAN. And at the moment of time when they are transacting it?

Mr. WALKER. At the moment of time, yes, sir; the same as the steamers from New York will change their rates. If cargo is offering freely, the rates stiffen. If they can not get enough for ballast, I have known steamers to go into the market and buy cargo to put in their ships for ballast and send it over to the other side and sell it; and the same thing from Liverpool to the Isthmus. I have known cases where these large Liverpool steamers going to the Isthmus have carried freight out to New Orleans, just so as to have some ballast between Colon and New Orleans, and carried it at a nominal rate. So, the shipowner feels that a fair rate is the rate that will pay him an interest on his investment, and he figures to get that.

Senator MORGAN. In case a shipper or a steamship company should buy cargo for ballast, as you say, between London and Colon, would you charge 25 per cent for transporting that cargo across the Isthmus at full rates?

Mr. WALKER. Oh, yes; at the tariff rate.

Senator MORGAN. At the tariff rate?

Mr. WALKER. Yes. In that case it would work out this way: The line from London to Colon, in connection with our railroad, being allowed to make a rate as low as, I think it is, 30 shillings, although it may be 35—I can not remember exactly—we would demand 45 per cent of that rate.

Senator MORGAN. Whether they——

Mr. WALKER. Whether they got anything or not.

Senator MORGAN. Whether they were shipping goods that they had bought or whether they were shipping for a customer?

Mr. WALKER. Yes, sir.

Senator MORGAN. The distance between the Isthmus and Hongkong is about what?

Mr. WALKER. I have never looked that up. It would be a guess on my part.

Senator MORGAN. If a ship sailed from London to make connection with a ship at the Bay of Panama, destined for Hongkong, would you charge only for the material that you actually hauled across the Isthmus, or would you charge 25 per cent of the rates on both tours?

Mr. WALKER. Well, if there was any arrangement about through rates to Hongkong, the probability is that the Pacific carrier would have to have a larger proportion, and that the railroad would have to take a lesser proportion than 25 per cent. But there is no traffic of that character.

Senator MORGAN. There is no such traffic?

Mr. WALKER. No, sir.

Senator MORGAN. What physical fact or situation is it that enables the railroad company and its steamers to demand this 25 per cent of all carriers that cross the Isthmus under these traffic arrangements?

Mr. WALKER. It was not reached by a demand. The steamship companies on the Atlantic were very anxious for outward cargoes, and they were continually subjected to pressure by shippers to reduce rates, and they could not reduce rates and pay us an arbitrary on the Isthmus; and they asked us if we would not come into some kind of an arrangement whereby we would prorate any rates they could get. And after a great deal of correspondence, and a railroad rate war on the Pacific in 1901——

Senator MORGAN. That is, with the transcontinental roads?

Mr. WALKER. This was particularly with the Pacific Mail Steamship Company.

Senator MORGAN. Yes.

Mr. WALKER. We all got together and said: "We will take a certain percentage from Panama to destination." And we agreed with the Pacific Mail as to how that should be subdivided. That accounts for these odd fractions that I gave you. But we were figuring to get, as nearly as we could, 25 per cent on the through business.

Senator KITTREDGE. Why do you say 25 per cent? Does that have any special relation to the actual cost of doing the business?

Mr. WALKER. No. That was a little higher than I had been getting before, and I was trying to get all the revenue I could, as a traffic manager always does.

Senator MORGAN. You could not have that sort of power over the regulation of traffic, say, between San Francisco and London, otherwise than from the fact that you furnish the shortest and most direct route of communication?

Mr. WALKER. Yes. That does not always take the traffic, either, because there is a good deal of traffic moved from San Francisco to London by vessels around the Horn, because they save storage.

Senator MORGAN. And your railroad line at Panama is about 46 miles long?

Mr. WALKER. The extreme length is 50 miles.

Senator MORGAN. Put it at 50 miles.

Mr. WALKER. Yes.

Senator MORGAN. Then for 50 miles of transportation you would get 25 per cent of the entire freight from London to San Francisco?

Mr. WALKER. About that.

Senator MORGAN. That is an immense leverage.

Mr. WALKER. Of course the question of cost comes in again. It is not the length of the road; it is the question of the cost of maintaining that road.

Senator MORGAN. I understand that; but it is an immense leverage as compared with the distance between London and San Francisco.

You take 50 miles of it, and you charge 25 per cent of the entire freight between London and San Francisco for crossing the Isthmus?

Mr. WALKER. Yes, sir.

Senator MORGAN. Now, you would not do that for any steamer or any steamship company that was not in the regular traffic and had not made a traffic arrangement with you for through billing?

Mr. WALKER. Anyone taking freight for the Isthmus must arrange with us to handle the freight at the Isthmus; to see that there is a means off getting it off the Isthmus on the other side. So, the very nature of the case forces some arrangement. Our position nowadays is that we will make that arrangement with anyone. The only thing necessary is to take it up in the first place. Of course, if an irresponsible person came to us and said: "I am going to carry such and such freight to the Isthmus," and we did not know how we could get it beyond, if they got it there, we would be likely to refuse it. But no such thing as that has ever arisen.

Senator MORGAN. The reason why it has not arisen is not because the traffic is not attractive, but it is because you have the power to shut that out, is it not?

Mr. WALKER. No, sir; I do not think so. Of course, it is hard to know just what decides anyone in his arrangements for a steamship traffic. This last fall I was very apprehensive that the Pacific Mail Steamship Company would not put on ships enough to handle the coffee traffic from Central America to the Isthmus, destined to Europe. And I advertised in the papers of Central America just what our rates were from the Isthmus to Europe, making them the proportion we were accepting on business that the Pacific Mail Steamship Company handled. In other words, they could have gone in and made the same rates as the Pacific Mail Steamship Company through to Europe and had just as much money as the Pacific Mail Steamship Company had, if they wanted to engage in the traffic; and we could not get anybody to go into it.

I noticed that a new steamship company was being formed in Germany, a Roland Line, and I wrote to Mr. Horn to know if he would call his steamers at the Isthmus. I never got a reply.

Two years ago I took up with the Cosmos Line the possibility of their making a connection with us at the Isthmus, and their managing director told me that they were not prepared to do so yet, that they had not the steamers to make a regular service, and that they would continue their business via the Straits of Magellan. He said he thought they might do business via the Isthmus sometime; but it might be in two years and it might be in ten years.

Senator MORGAN. I will get you, if you please, Mr. Walker, to give the names of the different steamship lines with whom you have this through billing arrangement to-day.

Mr. WALKER. The Royal Mail Steam Packet Company, from London, Southampton, and New York to Colon; The Leyland Line and the Harrison Line, from Liverpool to Colon; the Hamburg-Amerika Line, from Hamburg and Antwerp to Colon; the Compagnie Genéralé Transatlantique, from various ports of France to Colon; La Valoce, from Italian and Mediterranean ports to Colon; the Compañía Transatlántica, from Barcelona and Spanish ports to Colon; the Hamburg-Amerika Line, from New York to Colon; the United Fruit Company, from New Orleans to Colon; the Compañía Sud Americana de Vapores,

from the west coast of South America to Panama; the Pacific Steam Navigation Company, from the west coast of South America to Panama; the Pacific Mail Steamship Company, from San Francisco and the way ports of Mexico and South America to Panama. I think that is all.

Senator MORGAN. All these steamship lines make practically regular communication with Colon and Panama?

Mr. WALKER. Yes, sir; they have regular published sailing dates.

Senator MORGAN. Yes; some of them touch at New York coming from Europe?

Mr. WALKER. No, sir.

Senator MORGAN. None of them touch at New York?

Mr. WALKER. No, sir. The Royal Mail Steam Packet Company and the Hamburg-Amerika Line are in very active competition. The Hamburg-American Line is branching out in all directions, and some time ago they absorbed a steamship line from Europe to the east coast of South America. The Royal Mail were running a line from England to the east coast of South America, and the Hamburg-American Line bought the English Atlas Line service between New York and the West Indies; and the Royal Mail felt that they must get into some of the territory that the Germans were serving, and they extended their service from Colon to New York via West Indian ports, and they are fighting each other as best they can on all the local business. They do not do much on the Panama business, because they do not find revenue enough in it, I believe. They make rates a little lower than ours, but they sail once a fortnight and we sail every five days.

Senator KITTREDGE. How much business do they do between New York and Colon?

Mr. WALKER. I do not know just how much they do between New York and Colon local; that is, for Colon proper business. I have no means of finding that out.

Senator KITTREDGE. Do you not transport it across the Isthmus?

Mr. WALKER. No; local to Colon.

Senator KITTREDGE. Oh; local to Colon?

Mr. WALKER. Yes. As to the business across the Isthmus, the Hamburg-Amerika Line gave us to carry across the Isthmus last year 9,266 tons. The Royal Mail started late in September and gave us 1,349 tons.

The Royal Mail is more of a passenger line than a freight line. I believe their first object in going into the New York trade was tourist business for the West Indies. They advertise it extensively. They take their passengers to Jamaica and distribute them around through the islands there for winter tours, and the Hamburg-Amerika Line are doing the same kind of business.

The CHAIRMAN. Those ships sail from New York to Colon, do they not, and land at these different points, Jamaica and other points?

Mr. WALKER. They call at various ports.

The CHAIRMAN. And they leave from New York for Colon?

Mr. WALKER. No; they leave from New York for some of the way ports and then call at Colon afterwards.

The CHAIRMAN. They call at Colon afterwards?

Mr. WALKER. Yes, sir.

The CHAIRMAN. When they leave Colon, do they come back to New York or do they go to England?

Mr. WALKER. No; the Royal Mail goes back to Southampton.

The CHAIRMAN. They do not return to New York?

Mr. WALKER. They do not return to New York. Their itinerary is from New York via the West Indies to Southampton, and from Southampton via the West Indies to New York.

The CHAIRMAN. And with the German ships it is the same way, I suppose?

Mr. WALKER. No; the German Atlas Line service is entirely separate from their Hamburg service. The Atlas Line service is the West Indian service.

The CHAIRMAN. Is that a German line?

Mr. WALKER. Yes, sir. And they make incidental calls at Colon once a fortnight, and from Colon I think they go over to Port Limon and load bananas for New York particularly.

Senator MORGAN. All these great steamship lines have a practical competition with steamers that are called tramp steamers?

Mr. WALKER. Oh, all the time.

Senator MORGAN. Have you ever estimated what is the proportion in the commerce of the world of the tonnage of traffic of the tramp steamers as compared with those in regular lines?

Mr. WALKER. No, sir; I have never made any comparison of that.

Senator MORGAN. Are they approximately equal, do you think?

Mr. WALKER. Well, I think that, taking the world's commerce, the tramps probably do the most of it.

Senator MORGAN. They probably do the most of it?

Mr. WALKER. Yes; but, as between regular ports like New York and Liverpool, the regular lines would be ahead.

Senator MORGAN. At Colon and La Boca you do not get any of their trade in the tramps?

Mr. WALKER. There is no tramp trade on the Pacific that I know of. When the connecting lines would not get sugar from Peru for New York I induced William R. Grace to send a steamer up as a tramp, and in that way broke the rates, so that the lines on the Pacific went in and took some of that sugar business; and from here out there are tramps loading now in New York with cargo for the Isthmian Canal Commission particularly.

I heard the day before I left that a vessel had about completed loading 35 locomotives. Of course it takes a special type of ship to carry such cargo as that—such a quantity of cargo. And there is another vessel loading flat cars for the Isthmus. Both of those vessels will carry such freight as they can find in the market that wants to move to Colon, generally for the Commission. Because of the condition of the terminals down there, the docks, they land that cargo all up in the mouth of the canal there, and they never have approached us as to anything about freight rates for stuff beyond. In fact, they would not get enough of it to bother with it.

The business of the Isthmus amounts to a good deal in a year by the accumulation of a little at a time in these ships running regularly, and it is seldom enough accumulates to induce a tramp to go there; it is so extended. For instance, the business on the other side reaches from Valparaiso to Puget Sound, and that must be 8,000 miles, and they would have to have arrangements with lines on the other side or with the steamers on the other side to move it and arrangements at the ports for handling it. A tramp seldom goes into a business where he

has got to distribute a cargo. He wants a cargo from one place to another port or two, or something of that kind.

Senator MORGAN. Not for transit across any continent into another country?

Mr. WALKER. Very seldom. I never knew any tramps to do that kind of business.

Senator MORGAN. Theirs is rather a local business, then?

Mr. WALKER. Yes.

Senator MORGAN. The Government, therefore, is employing tramps to carry its heavy material of a peculiar sort to the Isthmus?

Mr. WALKER. Yes. Well, the Government is not employing them.

Senator MORGAN. The Isthmian Canal Commission?

Mr. WALKER. No. These engines are bought, the trade term is, "Cost, insurance, and freight" to Colon, and the shipper gets the best arrangements he can for the transportation, so that the Government has nothing to do with it until the goods arrive at Colon.

Senator MORGAN. The shipper in that case is permitted to compete with the steamship line between New York and Colon for freights?

Mr. WALKER. Oh, yes; there is no question of permission. We do not control that at all. It is not a case of permitting. The ocean is free to everybody; but he has got enough freight to go and get a ship and send her out there.

Senator MORGAN. In the case of purchases of coal by the year, it is a case of permitting, is it not? Do you not ship all the coal on the railroad account?

Mr. WALKER. I do not have anything to do with the movement of the coal. I only know of it by hearsay.

Senator MORGAN. Well?

Mr. WALKER. I know that they called for bids for coal, and I understood that they asked for prices delivered at Colon and also for prices delivered at tidewater here, and none of the companies would quote delivery in Colon. They quoted everything delivered here, at the coast port in the United States. So that, at the same time, the railroad company had to call for tenders for transportation of coal betweeen the United States port and Colon, the cost of the coal at tidewater plus the freight, making the cost delivered in Colon, after insurance was added.

Senator MORGAN. So that, in regard to the transportation of coal bought by the railroad company for delivery on the Isthmus, the steamers that sail from New York would not touch at Norfolk to take that coal?

Mr. WALKER. Freight and passenger steamers carrying a miscellaneous cargo never carry coal. Coal always goes in full cargoes. Of course, we have utilized the colliers ourselves at times, when we wanted to send dynamite or some dangerous cargo of that kind, which we are not permitted by the laws of the United States to carry on passenger steamers.

Senator MORGAN. The same is true in regard to cement. You would have to get cargo ships to transport it, would you not?

Mr. WALKER. Well, we would take cement, and we do take large quantities of cement from anybody that wants to ship it at our regular rate.

Senator MORGAN. On your steamers?

Mr. WALKER. Yes. That is very good cargo.

Senator MORGAN. It is good ballast?

Mr. WALKER. Yes; and it stows well and balances up when I get a lot of chairs and stuff that would blow the ship up.

Senator KITTREDGE. May I ask a question there, Senator?

Senator MORGAN. Certainly.

Senator KITTREDGE. What do you mean by a short ton?

Mr. WALKER. A short ton is 2,000 pounds, as distinguished from the English long ton of 2,240 pounds. There are certain kinds of business in this country that go by the 2,240 pounds. I think rails are called 2,240 pounds to the ton.

Senator KITTREDGE. Mr. Lesley, the president of a cement company, was before us the other day and left with us a copy of this letter. (Reading):

PANAMA RAILROAD COMPANY,
New York, March 30, 1906.

UNITED BUILDING MATERIAL COMPANY,
320 Broadway, New York.

DEAR SIRS: In reply to your inquiry of even date regarding rate on cement from New York to Colon, we beg to say that the present figure by our line is $4.50 per ton of 2,000 pounds. This rate became effective on the 21st instant. The rate from December 31, 1905, to March 31 this year, was $5 per short ton.

Yours, truly,

R. L. WALKER,
Traffic Manager.

Mr. WALKER. That was written by my freight man, I suppose, from my office.

Senator KITTREDGE. Why was that rate changed?

Mr. WALKER. I made the change in the rate from noticing a criticism before this committee. I think one of the New York papers had just made a summary of the proceedings, and they said that our rates were higher than the rates from Europe. That is the first that had been called to my attention, and I looked up the tariff of the Hamburg-American Line, and found that they were charging a rate per 2,240 pounds that was equivalent to our charging $4.50 for 2,000 pounds. So that I took the 50 cents off, and reduced it from $5 to $4.50.

It has been my aim for years to get the New York markets on the basis of the European markets. You see, they found it necessary in Europe to make the rates from Hamburg as low as the rates from England, and the rates from the Mediterranean as low as the rates from the northern part of Europe; so that the different places, which are almost as widely separated, you may say, as New York and England, were able to sell in the same markets, as far as freight rates were concerned. I am trying to get New York on the same basis, and I tried to get our steamship lines to do the same way. I always considered that it was a good business policy, but I am sorry to say that I can not always make steamship connections think the same thing. The English steamship lines, particularly, get the best rates they can out of every bit of business that comes up.

Senator MORGAN. The great bulk of the commercial business across the Panama Railroad is the result of these through billing contracts?

Mr WALKER. That has built the business up.

Senator MORGAN. And you have made a great deal of money out of it?

Mr. WALKER. Well, that is a comparative term.

Senator MORGAN. Taking $8,000,000, which is the capital stock of the Panama Railroad Company, as a basis of calculation, you have made a very fine income upon that $8,000,000, have you not?

Mr. WALKER. Taking it from the start of the road, yes; they have made a great deal. But of late years they have made not more than a fair interest, apparently what a man would consider a fair interest on a railroad investment.

Senator MORGAN. That is in consequence of competition, or of disturbances on the Isthmus?

Mr. WALKER. It is competition that has made the rates go down.

Senator MORGAN. How about disturbances on the Isthmus? Have they had anything to do with it?

Mr. WALKER. No, sir.

Senator MORGAN. They have not affected it at all?

Mr. WALKER. No, sir. I say no; a strike that occurs does affect the business.

Senator MORGAN. I mean disturbances of a revolutionary character.

Mr. WALKER. Nothing like that; no, sir.

Senator MORGAN. You have had a good many strikes, or several strikes, have you not?

Mr. WALKER. Two or three since I have been with them.

Senator MORGAN. And pretty stiff ones, too?

Mr. WALKER. One was a pretty stiff one, that just fairly congested the Isthmus. They got everything tied up—cars full, warehouses full—and they could not turn a wheel until we sent a tramp there empty that we chartered for that purpose, so that they could fill something in it and commence to move the business again.

Senator MORGAN. You got rid of it by advancing the rates of pay for labor?

Mr. WALKER. I think at that time the question of exchange came in. I am getting a little out of my bailiwick now, Senator. They told me that they had to go to this increased expense, and I said: "Well, I do not see that you have increased your expense much, because the rate of exchange has gone up proportionately, and the only difference is that where you were paying a man the equivalent of so much gold you are paying it to him now, only you are giving him more silver for it."

Senator MORGAN. The price of money had gone down; the value of the money had gone down?

Mr. WALKER. That is it.

Senator MORGAN. And the increase in the wages only balanced that up?

Mr. WALKER. Yes, sir. Then, I think, when they got the arrangement about two for one in there, they tried to reduce the men on the same basis, and the men did not take to that as kindly as they would to the going up part.

Senator MORGAN. You have had a long and protracted and very interesting interchange of diplomatic correspondence with Mr. Huntington?

Mr. WALKER. Of course Mr. Huntington I never was thrown with, I think I never met him but once.

Senator MORGAN. That was before your day?

Mr. WALKER. No; he was at the head of the Pacific Mail, but my relations were with Mr. Schwerin. Mr. Schwerin takes care of his own traffic and I have the traffic of the Panama Railroad.

Senator MORGAN. Mr. Schwerin was not in combination with Mr. Huntington?

Mr. WALKER. Oh, he was the vice-president of the company and took his orders from Mr. Huntington.

Senator MORGAN. I supposed so; and that is the reason I spoke of Mr. Huntington as being the man with whom you were conducting this very extensive and frequent and lengthy correspondence in regard to traffic rates across the Isthmus, particularly in regard to coffee and other heavy freights.

Mr. WALKER. With Mr. Schwerin, yes, sir.

Senator MORGAN. He representing the interests that Mr. Huntington stood at the head of?

Mr. WALKER. That is it. You are speaking, now, of a good many years ago, of course.

Senator MORGAN. Yes. I am trying to get a general view of the situation of the traffic and relations of the railroad to other railroads during the time that you have been personally acquainted with the conditions there.

Mr. WALKER. Yes, sir.

Senator MORGAN. During all the time that you have been there, with the exception of probably 700 shares out of 70,000, the Panama Canal Company has been the owner of the stock of this railroad?

Mr. WALKER. They were the majority stockholders.

Senator MORGAN. To about the extent I mentioned?

Mr. WALKER. Something like that. The minority was very small.

Senator MORGAN. And a negligible quantity? The minority was a negligible quantity in all arrangements that the majority saw proper to make?

Mr. WALKER. I should suppose so.

Senator MORGAN. On any subject relating to the interests of the railroad?

Mr. WALKER. I should suppose so. Of course, the minority have their rights.

Senator MORGAN. I understand they have, whenever they can enforce them.

Mr. WALKER. Well, they get into courts to enforce their rights.

Senator MORGAN. The minority have their rights in the Senate, but they do not make anything of them. [Laughter.]

Senator KITTREDGE. I would like to know how your rates on the steamships compare with the tramp ship rates.

Mr. WALKER. I suppose that our general rates would rule higher. They ought to.

Senator KITTREDGE. Why?

Mr. WALKER. Because the tramp goes in for a particular business that he can handle, a straight run at a lower cost than that for which we can handle a miscellaneous cargo. A tramp steamer makes the time between the Isthmus ten or eleven days at a very low cost of steaming. Our steamers make the time in from five and a half days to seven days, and they are very much more expensive boats to run. In fact, it is always more expensive to operate American steamers than

it is these foreign tramps. The first cost of the ships is a great deal more—the capitalization; and the wages of the crews are higher, and everything goes to make a more expensive transportation under the American flag than under any other.

Senator KITTREDGE. How much greater?

Mr. WALKER. I do not know what the average cost of running a foreign boat is. The only thing I can judge by is the rate they want to get for demurrage, and that is a matter of trade dicker. But I never have known anyone that would accept less than 4 pence per ton per day on the dead weight capacity of the vessel. That is about 8 cents a ton, and if the ship can carry 5,000 tons they want $400 a day.

Senator MORGAN. And "per day" means the twenty-four hours?

Mr. WALKER. Twenty-four hours; yes. That means the value of that ship; that is, the pay of the crew, cost of feeding the crew, and the cost of the vessel. I heard it stated a few years ago that they build ships in the English yard at so many pounds per ton. A man would say he wanted a ship of a thousand tons, and they would build it at a certain rate per ton. I have never known that to be done in our American yards.

Senator KITTREDGE. How much more does your steamship charge than a tramp ship charges for ordinary freight?

Mr. WALKER. It would depend entirely upon what business the tramp had. If a shipowner had a contract to bring sugar from Cuba to New York which would carry a number of steamers down there, he would, if he could get a cargo of rails, take them at possibly $2.90 a ton to the Isthmus; but if he had no cargo in sight to come home, he would want more money, because he would have to take a chance at finding a cargo from somewhere down there to some other port. There is no scale of rates at all. Each individual tramp makes his own arrangements for freight as suits him in a general arrangement of a voyage.

Senator KITTREDGE. He does the best he can to get a good rate; is that it?

Mr. WALKER. That is it.

The CHAIRMAN. Does a tramp steamer carry passengres?

Mr. WALKER. No, sir. They are not licensed for passengers at all.

Senator KITTREDGE. Suppose one of your ships was about to sail from New York and had a light cargo; would you make any reduction in freight in order to take down a full cargo?

Mr. WALKER. I have not had to deal with that subject since the United States has owned the stock; and I have been thundering stiff since that. I have said that we would stick to the tariff rate straight along. But of course if our ship had to sail, and she had not enough cargo to make her safe or trim her well, I certainly would feel that if I could get a thousand barrels of cement by cutting a rate in half that I had to do it. Of course there is no law to my knowledge against anything of that kind, and it is only the principle of the matter that I would feel that the United States, being committed to treat all shippers alike, should not give one fellow an advantage, a big fellow an advantage over the general run of small shippers.

Senator KITTREDGE. Do you have a classification of freight?

Mr. WALKER. Yes, sir.

Senator KITTREDGE. Similar to that adopted by the railway companies?

Mr. WALKER. We have a classification of freight that was gotten up by consultation among all the lines running to the Isthmus. In fact, we have two: One that pertains to the business of Central America and Mexico from Europe and from New York, and one that pertains to the business of South America. The South American classification was necessarily changed on account of a classification used by the major interest moving via the Magellan route from Europe, the Cosmos Line and the Pacific Steam Navigation Company and the Gulf Line and Lambert & Holt's tramp steamers.

Senator KITTREDGE. How does your through rate, where the rail transportation is a part, compare with your local rate from Colon to Panama?

Mr. WALKER. By rail where? Across the Isthmus?

Senator KITTREDGE. Yes.

Mr. WALKER. The local rates across the Isthmus are all by weight. I compiled a classification myself in February, 1905. I considered the rates that had been charged, and how they should be reduced or how they should be changed, and the rates of the trunk lines about New York, so as to get a figure charged as between valuable goods and cheap goods or light goods and heavy goods. That is, for light goods I made a higher rate per 100 pounds than on heavy goods of the same comparative values. The through freights are all based on what the steamships do, weight or measurement; so that there is no actual way to compare it except item by item.

Senator KITTREDGE. You have a general notion of how they compare?

Mr. WALKER. On the item of cement, for instance, I think they are just the same thing.

Senator KITTREDGE. Suppose you ship a quantity of coffee from Panama to Colon by rail; that is a local rate?

Mr. WALKER. Yes, sir.

Senator KITTREDGE. How would that rate compare with the rate from Panama to New York?

Mr. WALKER. I think the local rate would be just about the same as the proportion that we get out of the through rate. The local rate, I understand, from Panama to Colon, as compared with the rate from Panama to New York, is what you wish?

Senator KITTREDGE. Yes.

Mr. WALKER. I think the 45 per cent of the through rate would compare just about the same as the actual local rate; but there is no coffee moved from Panama to New York to speak of.

Senator KITTREDGE. I understand. That was simply an illustration.

Do you state to us, then, that the local rates are substantially the same as the railway part of the through rate?

Mr. WALKER. No. The general run of the rates would be a little higher, I think.

Senator KITTREDGE. How much higher?

Mr. WALKER. I would have to make an absolute comparison, because I did not compare that when I made it up, except in one or two cases. I took it up particularly with the major items, like cement.

Senator KITTREDGE. Of course, if you looked it up you would be able to tell us accurately.

Mr. WALKER. Yes.

Senator KITTREDGE. Give us your best information about the subject.

Mr. WALKER. As I have never made an actual comparison, it would be a wild guess for me. I can show you what the average earnings of the freight on the road were. I can tell that exactly.

Senator KITTREDGE. Would that help us much?

Mr. WALKER. I do not know, Senator. I do not gather just the drift of your question.

Senator KITTREDGE. What I am trying to get at is any difference in the local and the through rate.

Mr. WALKER. Well, you see, the through rate being based on a measurement basis in so many cases, you can not compare it unless you have got the weight and measurement of each article. For instance, I would carry chairs across the Isthmus by weight, because it did not seem wise to go into so elaborate a classification as the railroads have up here. I make one rate for the chairs, whether they are very bulky or whether they are light. I think a man could ship chairs from New York to the Isthmus at the steamship measurement rate, and then ship them across the Isthmus at a lower rate than my through rate measurement to Panama. Is that clear?

Senator KITTREDGE. Well——

Mr. WALKER. I had a case, Senator, that I looked up. We had a rate for the Commission of $5 a ton, a flat rate, without regard to whether it was weight or measurement. Everything was charged $5 for 2,240 pounds.

Senator MORGAN. How was the ton estimated?

Mr. WALKER. It was not estimated. It was actually weighed.

Senator MORGAN. It was weighed?

Mr. WALKER. We weighed the goods, 2,240 pounds, at $5 a ton.

Senator MORGAN. Five dollars a ton by weight?

Mr. WALKER. Yes; everything was handled at that rate. And one of our Washington shippers sent down a lot of chairs for the Isthmus, and we measured them, and they measured 173 tons, and weighed 8 tons. In other words, that particular shipment would pay, at $5 a ton, $40, and take up the space of general paying merchandise of 173 tons; because the shipper had no interest in making compact packages. If you charge weight or measurement, he knocks down his shipments and gets them as small as he can, because, paying by measurement, that reduces his freight rate.

Senator KITTREDGE. After you have the road equipped with the heavier locomotives and larger cars are you able to tell us what the actual cost of transportation from Colon to Panama will be per ton?

Mr. WALKER. I can not. That will figure out in the actual working of the road, and the auditors will show that. That comes under the operating department. It does not come in my department at all.

Senator KITTREDGE. I understand, of course; but I did not know but what you had that in mind.

Mr. WALKER. No; I have no idea. I was talking with the general manager, or practically general manager, of the Lake Shore and Michigan Southern road, and he told me that he wanted Mr. Vanderbilt, years ago, to get heavy locomotives to draw long trains, which would reduce the cost. He said that Mr. Vanderbilt was not willing to do it. So that he, in his general operation of the railroad, straightened

out the curves and cut out the grades and filled in where it was necessary, got his track so that he reduced his expense of operating the trains over the road, and then, finally, they gave him the new locomotives anyway, and he had his straightaway track and good locomotives and cut down the cost of hauling very, very much; I do not know how much, but I give that as an illustration of showing how impossible it is to tell in advance just what you can do.

Senator KITTREDGE. The present cost per ton is $3.06?

Mr. WALKER. Yes, sir.

Senator KITTREDGE. What is your best judgment about the probable amount that it will cost after the new equipment is in operation?

Mr. WALKER. I have no way of judging at all, Senator.

Senator KITTREDGE. Would it be reduced as low as $2 per ton, according to your best judgment about it?

Mr. WALKER. I do not know how to answer that at all. I have to take the auditor's figures.

Senator KITTREDGE. We may reasonably expect it to be much reduced?

Mr. WALKER. Yes; very much reduced, I should say. I understand Mr. Stevens expects it to be very much reduced.

Senator KITTREDGE. Some of the witnesses who have appeared before this committee have suggested that a flat rate of, say, $2 per ton should be charged for rail transportation across the Isthmus. What do you think about that?

Mr. WALKER. Well, I, of course, am on record on that already. I am very much opposed to anything like a flat rate.

Senator KITTREDGE. Why?

Mr. WALKER. Because it is very unfair, for just the reason that I have illustrated in speaking about those chairs. There should be a difference between light goods and heavy goods, and valuable goods and cheap goods. Cement can not stand the tax for transportation that dry goods can, and cotton piece goods can not pay as much as silks, and you must have a tariff to average up your rates, in order to make a revenue on the road. For instance, a large part of the freight that we carry across the road is carried at less than the average cost of transportation. For instance, our average earning on San Francisco freight, which, by the way, is all carried by weight—from San Francisco to New York—was $2.20 a ton. You might say that that was carried at a loss, and that we had better be without it; but that is not so, because your fixed charges on the road remain just the same, and the more tons you carry that pay more than the actual expense of loading them on the cars and taking them off, and the wear and tear on your road, go to make up a net profit at the end of the year.

Senator KITTREDGE. Have you read Mr. Wallace's statement upon the subject that I called your attention to?

Mr. WALKER. I have read a good many of Mr. Wallace's statements. I do not know what one particularly. I read one that he made to Mr. Bristow, and it called forth in my mind just exactly the remark I made a while ago—that a railroad man gets very much befogged on this question of charging freight by weight or measurement and what it means. Mr. Wallace stated that our rate of $5 a ton from New York to Colon was a high rate and was more than the rate to San Francisco. I just sat right down and figured it out on another case, in some furniture that went to the Isthmus, that went down there at $5 a ton weight, and

if it had been going through to San Francisco, the through rate would be based on the measurement of the goods; that is, a higher rate per hundred pounds, and that same furniture would have paid the steamship line between New York and Colon twice as much as the Canal Commission paid for hauling it.

Senator KITTREDGE. That is an extreme case, is it not?

Mr. WALKER. Yes, sir; but it went against the argument. That is the only point. And the $5 rate, with machinery and bulky stuff that we were carrying down to the Isthmus, was becoming such a tax on the steamship line that we could not stand it. Nobody would go into the business. Nobody would handle any freight to the Isthmus. The United Fruit Company, I understand, thought they would stop running from New Orleans altogether. They could not compete, because we were doing the business at a loss. It would not pay handling expenses.

Senator MORGAN. Mr. Walker, I understand now, from the general drift of your testimony, that you have the practical regulation of the freight rates across the Isthmus on all transportation that comes from outside places?

Mr. WALKER. Well, I never make any arrangement unless I discuss the matter either with Mr. Shonts, the president, or with Mr. Drake, as the case may be. Each general change in policy I would take up with them before making any change.

Senator MORGAN. Your general authority, though, as the administrative officer, as the manager of freight rates, or of traffic, would enable you to fix the rates across the Isthmus?

Mr. WALKER. Yes, sir.

Senator MORGAN. On all goods that come from ports outside?

Mr. WALKER. Yes.

Senator MORGAN. Not of local trade.

Mr. WALKER. No. Well, I make the rates on the local trade, too.

Senator MORGAN. Do you?

Mr. WALKER. Yes, sir.

Senator MORGAN. So that you have had practically the charge of the whole business of the income from freight rates since you have been connected with the work?

Mr. WALKER. Yes, sir; subject, as I say, to the orders of my superior officers.

Senator MORGAN. With the few exceptions relating to the sale of lands and the lease of lands and things like that the income of the Panama Railroad Company has been derived almost entirely through your management?

Mr. WALKER. Well, that is the way the traffic manager looks at it. I do not know whether I take too much on myself or not.

Senator MORGAN. I look at it that way from my examination of this subject, as well as from your statement; from my examination of it outside of your statement, entirely.

Mr. WALKER. Yes, sir.

Senator MORGAN. Could you make an estimate or furnish the committee, if you please, with the general aggregate, approximately correct, of the amount of money that has been contributed through what we will call traffic by the use of steamships and the railroad for this railroad company since the time you first entered the service? I want to get at the amount of the aggregate income from this source.

Mr. WALKER. The gross earnings of the railroad?

Senator MORGAN. Gross; not net.

Mr. WALKER. Yes, sir.

Senator MORGAN. And, of course, I expect to get at it only approximately.

Mr. WALKER. I will get at it from taking the annual reports, of course.

Senator MORGAN. This contribution of these earnings has gone to the railroad company in money? All that you have dealt with has been cash?

Mr. WALKER. Yes; all cash.

Senator MORGAN. And the board of directors have disposed of it in betterments and in improvements and whatever else was necessary to keep up——

Mr. WALKER. And some dividends.

Senator MORGAN (continuing). And all that; all the expenses of the general management of the railway company?

Mr. WALKER. Yes. sir.

Senator MORGAN. Of course this cash, no matter how it has been used, has been for the benefit of the stockholders?

Mr. WALKER. Yes, sir.

Senator MORGAN. During the time you have been there the railroad company has not met with any serious disasters in any way?

Mr. WALKER. No, sir.

Senator MORGAN. It has been one progressive work of improvement and aggregation of wealth?

Mr. WALKER. Yes, sir.

Senator MORGAN. I call it wealth.

Mr. WALKER. Yes, sir.

Senator MORGAN. And that has gone to the benefit of the stockholders?

Mr. WALKER. Yes, sir.

Senator MORGAN. In one form or another?

Mr. WALKER. Yes, sir.

Senator MORGAN. In paying losses or in betterments of the railroad and purchasing steamships and their repair and improvement, and so forth, but it has all gone to the increase of the value of the railroad property?

Mr. WALKER. Yes, sir.

Senator MORGAN. In the management of the traffic arrangements of the railroad have you received advice or protestation or recommendation, either directly or indirectly, from the Panama Canal Company?

Mr. WALKER. No, sir.

Senator MORGAN. None whatever?

Mr. WALKER. No, sir.

Senator MORGAN. You have had some correspondence with the Panama Canal Company, or at least the board of directors have had, the records here show, in regard to these Huntington negotiations—I call them the Huntington negotiations—in reference to Pacific traffic?

Mr. WALKER. Well, Mr. Whaley was the vice-president of the Panama Railroad, and he was also an officer of the canal company; so, if he sanctioned the making of an agreement with the Pacific Mail,

it was tantamount to the canal company doing it, I suppose. He was an officer in both companies.

Senator MORGAN. I am trying to show, to be very frank in my statement, how far the Panama Canal Company has advised or consented to or recommended or demanded changes in traffic arrangements on the part of the railroad company.

Mr. WALKER. Well, since I have been there they have pretty nearly always agreed with what I have recommended—that is, I had Mr. Whaley's confidence. He thought my judgment was good, and when I told him I thought that certain ways of doing would increase the revenue he seemed to agree with me, and I went ahead on that basis.

Senator MORGAN. Mr. Whaley was vice-president of the railroad company?

Mr. WALKER. He was vice-president and general manager when I went with the company.

Senator MORGAN. With the railroad company?

Mr. WALKER. Yes, sir.

Senator MORGAN. Did he have any official connection with the Panama Canal Company?

Mr. WALKER. I do not know about that. He came out here from the Panama Canal Company—from France.

Senator MORGAN. He was sent over by that company?

Mr. WALKER. Yes, sir.

Senator MORGAN. For what purpose?

Mr. WALKER. To take charge of the railroad; to be the vice-president and general manager, I believe. That was also before I went with the company.

Senator MORGAN. He was really the representative of the Panama Canal Company in the railroad company?

Mr. WALKER. Yes, sir.

Senator MORGAN. As the vice-president and general manager?

Mr. WALKER. Yes, sir.

Senator MORGAN. Now, during the period of time that you have been there, there have been some very considerable accessions of property to the railroad company in obtaining by purchase, negotiation, and expenditure, and so forth, the Boca terminal?

Mr. WALKER. The pier there; yes, sir.

Senator MORGAN. And all of the terminals, including the ditch down to the three islands there?

Mr. WALKER. Yes, sir; digging a channel from the pier out to deep water.

Senator MORGAN. That channel was dug by the Panama Canal Company?

Mr. WALKER. I do not know.

Senator MORGAN. But it was purchased by the railroad company from the Panama Canal Company?

Mr. WALKER. I do not even know that.

Senator MORGAN. These records show all that. I need not particularize about it. I supposed that you knew.

Mr. WALKER. No. My understanding was that this terminal was built on the bank of what would be the canal when it is finished, and that the channel from the pier to the ocean was part of the canal. I

think I heard that we undertook to keep that channel clear, so that we could use the dock; but I am not even sound on that. I am not a fair witness on that.

Senator MORGAN. You do not know of the bill that was paid by the railroad company to the Panama Canal Company for that ditch?

Mr. WALKER. No, sir; I have no idea.

Senator MORGAN. Or for the pier?

Mr. WALKER. The railroad paid for the pier, I am quite certain.

Senator MORGAN. It paid for it. The French Canal Company built it and the railroad company paid for it?

Mr. WALKER. I think that was the way of it.

Senator MORGAN. I think it was. Then there was a controversy or a contention with Panama as to whether the building of that pier and the extension of that ditch down to the islands was a compliance with an engagement in the original concession to the railroad company that they would carry the railroad to deep water?

Mr. WALKER. Yes, sir.

Senator MORGAN. And that contention was finally settled by an agreement between Colombia and the railroad company?

Mr. WALKER. Yes, sir.

Senator MORGAN. For which the railroad company paid money?

Mr. WALKER. I suppose they did.

Senator MORGAN. The canal company——

Mr. WALKER. They always paid Colombia anything they got.

Senator MORGAN. The canal company did not pay it?

Mr. WALKER. Well, I do not know, as between the two; but I know there was a consideration paid. Who it was charged to I do not know.

Senator MORGAN. The records show that the railroad company paid it. There was also, during that time, a diversion of the railroad at Culebra?

Mr. WALKER. Yes, sir; at some time, I do not know when.

Senator MORGAN. Well, that diversion was not for the benefit of the railroad, was it? It was not for the benefit of work they were doing on the canal?

Mr. WALKER. I think it was rendered necessary by the work on the canal.

Senator MORGAN. It was made necessary by the work on the canal?

Mr. WALKER. I think so. As I recollect the situation, the railroad was in danger of slipping into the canal. The bank was giving way there, and they had to move the railroad.

Senator MORGAN. Because it was threatened?

Mr. WALKER. Yes, sir.

Senator MORGAN. And threatened by work that was being done on the canal?

Mr. WALKER. Yes, sir.

Senator MORGAN. It was the digging that was going on that threatened the railroad?

Mr. WALKER. The digging of the canal was jeopardizing the railroad, as far as I know.

Senator MORGAN. The railroad as originally laid down was all safe enough?

Mr. WALKER. Oh, I think so.

Senator MORGAN. The work that was done by the canal company in digging the canal endangered it, caused slides, and endangered it?

Mr. WALKER. I should say that was it.

Senator MORGAN. That was the situation?

Mr. WALKER. That is the way it looked to me when I was down there. The bank was giving way, as they were digging at the bottom.

Senator MORGAN. So that the diversion was not an actual advantage to the railroad as a route of transit, but was an advantage to the canal company because they had to occupy the ground in digging the canal?

Mr. WALKER. I am under the impression that the change did benefit the railroad, in straightening it out in some way.

Senator MORGAN. There was a very large amount of work done by the railroad assisting in the construction of the canal, in hauling material backward and forward, and by hauling out the spoil from the diggings to the dumps?

Mr. WALKER. I do not know anything about that.

Senator MORGAN. You kept no account of that?

Mr. WALKER. None at all.

Senator MORGAN. No arrangements were made with you as traffic manager for the control of that business?

Mr. WALKER. No, sir.

Senator MORGAN. Who did manage that on the part of the railroad?

Mr. WALKER. I suppose it was done by the superintendent on the Isthmus.

Senator MORGAN. Well, the aggregate amount of charges for this construction work on the canal was large?

Mr. WALKER. The only part that I knew about was the hauling of the supplies for the canal.

Senator MORGAN. Yes.

Mr. WALKER. And that was arranged by special rates for quantity—that is, 50 tons was one rate and a train load was another rate—but whether the old canal company ever moved a pound of excavation over the road or not I do not know.

Senator MORGAN. So that whatever traffic arrangements were made for the removal of this spoil or this material you did not include in your accounts at all; that was an outside business?

Mr. WALKER. Yes, sir; that was an outside business.

Senator MORGAN. The railroad company was an indispensable factor in the digging of that canal, was it not—the railroad of the company?

Mr. WALKER. It was indispensable in getting the supplies to the canal, or to the point of use.

Senator MORGAN. And also in hauling——

Mr. WALKER. But, as I say, about the hauling out, the Frenchmen had a great many small tracks down there of their own, and I do not know where their dumps were or what they did with what they dug out.

Senator MORGAN. But for the fact that the canal company was the majority stockholder, nearly to the full amount of the stock, that company would have had no right to control the railroad, an independent American corporation, in any of its dealings?

Mr. WALKER. No, sir; it controlled the railroad exactly the same as the United States controls it now.

Senator MORGAN. It did control it?

Mr. WALKER. In just the same way the United States does now, as stockholder.

Senator MORGAN. So that the control of the canal company over

the railroad was practically the same that the United States now exercises over it?

Mr. WALKER. The United States bought from the French people their rights.

Senator MORGAN. Yes.

Mr. WALKER. And got just what they had, and then bought a little more.

Senator MORGAN. Since they took over the property. I am referring to that period of time, of course.

Mr. WALKER. Yes, sir.

Senator MORGAN. While the French company was the owner of this majority of the stock, there could not have arisen any important controvery between the railroad company and the canal company as to the management of the road, because the canal company had the absolute control?

Mr. WALKER. Well, the canal company elected a set of directors, and the directors were responsible for their acts. I should say if the directors were called upon to do something that they did not think proper to do that they could not enforce it.

Senator MORGAN. They might get turned out for it, too.

Mr. WALKER. They could not until the next annual election. If you are a director in a railrord you are there for a year if you choose to stay.

Senator MORGAN. They could not be removed?

Mr. WALKER. There would be no way to do it, except by putting the thing in the hands of the court, that I know of, in any railroad in the United States.

Senator MORGAN. Then it was a calculation on their loyalty to the canal company when they were appointed by it in the conduct of the business of the railroad?

Mr. WALKER. The same as the present directors are accountable to the United States.

Senator MORGAN. Yes. Well, in all material respects and to every material extent, I understand that the canal company was the owner and the controller and the director of the operations of the railroad?

Mr. WALKER. Yes, sir.

Senator MORGAN. In a large sense?

Mr. WALKER. Yes, sir; in the broad sense.

Senator MORGAN. In the general sense?

Mr. WALKER. Yes, sir.

Senator MORGAN. I do not think, Mr. Chairman, that I have occasion to ask Mr. Walker any more questions. I desire to express my very great respect for his statements, because they have been strictly impartial.

Mr. WALKER. Thank you, Senator.

The CHAIRMAN. I think Mr. Walker has given his statement, as he understands it, very frankly and very fully. We will excuse you now, Mr. Walker, so that you may return to New York, and we thank you for coming over.

(The committee thereupon adjourned.)

ISTHMIAN CANAL.

COMMITTEE ON INTEROCEANIC CANALS,
UNITED STATES SENATE,
Washington, D. C., May 9, 1906.

The committee met at 10.30 o'clock a. m.

Present: Senators Millard (chairman), Kittredge, Dryden, Knox, Morgan, and Taliaferro.

TESTIMONY OF WILLIAM NELSON CROMWELL, ESQ.—Continued.

Mr. Cromwell was duly sworn, and testified as follows:

Senator MORGAN. Mr. Cromwell, when we last had the pleasure of your company here for examination we had gotten down to the date of 1898, and were referring to a letter written by you on December 21, 1898, addressed to Mr. Hay, in which you say (reading):

"It is the opinion of the Government executives and of ourselves that power to give such extension is already located in the Government by the terms of the original concession, but the formality of ratification will be requested in due course, and of its being granted we have not the remotest apprehension.

"You will thus see that my confidence in the attitude of Colombia, as indicated in my last note, has been fully and quickly confirmed."

What does that relate to?

Mr. CROMWELL. It speaks for itself, Senator. I have already answered upon that subject.

Senator MORGAN. That is not an answer to my question, Mr. Cromwell. I ask you, upon your personal knowledge and oath, What does that relate to?

Mr. CROMWELL. I repeat that it speaks for itself, and refers to the proposal for the extension of the concession of the Panama Canal.

Senator MORGAN. Which concession?

Mr. CROMWELL. The concession of the company; the extension of the original concession of 1878.

Senator MORGAN. That was the extension from 1904 to 1910?

Mr. CROMWELL. The one which was subsequently granted, in April. 1900.

Senator MORGAN. Extending from 1904 to 1910?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. You had knowledge of that transaction?

Mr. CROMWELL. I had such knowledge as I have indicated in the letter.

Senator MORGAN. No more?

Mr. CROMWELL. I had more.

Senator MORGAN. What is it?

Mr. CROMWELL. It is confidential.

Senator MORGAN. You refuse to state it?

Mr. CROMWELL. I do.

Senator MORGAN. You refuse then to make any statement in regard to your knowledge of the transaction referred to in that letter?

Mr. CROMWELL. I do.

Senator MORGAN. You gave the transaction to Mr. Hay. Did you explain to him also further in oral conversation with him anything about it?

Mr. CROMWELL. I decline to make further explanation than I have, sir.

Senator MORGAN. Do you decline to answer that question?

Mr. CROMWELL. I do, sir.

Senator MORGAN. Well, do you decline on the ground that you were the counsel of the Panama Canal Company?

Mr. CROMWELL. I do; and also upon the ground that it is not germane to the inquiry of this committee.

Senator MORGAN. Well, its being germane I do not think is a question that a witness has a right to decide. You put it upon both grounds?

Mr. CROMWELL. I do.

Senator MORGAN. Do you put it on the ground that you were also counsel of the Panama Railroad Company?

Mr. CROMWELL. I do not.

Senator MORGAN. You do not? Well, we will go back to that, then. You do not consider that, as counsel of the Panama Railroad Company, you are under any obligation to withhold any facts from the United States Government that you received from that company as counsel?

Mr. CROMWELL. I do not care to answer such a question. When you put me a question I will answer it.

Senator MORGAN. Well, that is the question I put to you.

Mr. CROMWELL. When you put a pertinent question to me I will answer it—not hypothetical questions.

Senator MORGAN. Probably, Mr. Cromwell, you overrate either your capacity or your standing if you think that you have the right to decide upon the pertinency of any question that is asked you at this board.

Mr. CROMWELL. I think I must decide whether it is pertinent. Upon my responsibility I must decide. You may decide upon your responsibility.

Senator MORGAN. You do decide that it is not pertinent?

Mr. CROMWELL. Upon my responsibility I do so decide.

Senator MORGAN. You decide that it is not pertinent?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. And that is one of the reasons you have for not answering it?

Mr. CROMWELL. It is.

Senator MORGAN. You have no reason such as that there is some obligation resting on you as counsel of the Panama Railroad Company that prohibits you from answering?

Mr. CROMWELL. I again state, Senator, that I will not reply to hypothetical questions. If you will be good enough to address me a question which is pertinent, I shall be glad to give you my conclusions upon it.

Senator MORGAN. As the counsel of the Panama Canal Company, do you refuse to answer any question that you believe is covered by the protection of your clients against your making any disclosures?

Mr. CROMWELL. The question you present is hypothetical, and I decline to answer hypothetical questions.

Senator MORGAN. It appears from this minute book, Mr. Cromwell, that in 1893 there was a purchase of rolling stock by the railroad company from the liquidator of the old canal company. Do you recollect that transaction?

Mr. CROMWELL. What date is it, Senator?

Senator MORGAN. 1893.

Mr. CROMWELL. What time of the year, sir?

Senator MORGAN. I have not got the precise date.

Mr. CROMWELL. I have no recollection of it. I thought perhaps the date might assist me.

Senator MORGAN. You have no recollection of the purchasing of rolling stock from the old company?

Mr. CROMWELL. It would not come in my province, and I would not be likely to have.

Senator MORGAN. If you were present at the meeting when it was done?

Mr. CROMWELL. Was I present?

Senator MORGAN. Well, if you were? Were you?

Mr. CROMWELL. I have no recollection, sir. What date did it occur?

Senator MORGAN. Was there not about five or six hundred thousand dollars of the rolling stock of the old company that the liquidator held and the railroad company under your advice bought?

Mr. CROMWELL. No, sir; not under my advice, I am very sure. I have no recollection of the transaction even. When did it occur, Senator?

Senator MORGAN. It occurred in 1893.

Mr. CROMWELL. What time of the year?

Senator MORGAN. I will find you the time presently. I want to test your recollection.

Mr. CROMWELL. Yes. I have no objection to its being tested.

Senator MORGAN. Do you think you would recollect a transaction involving five or six hundred thousand dollars for the purchase of rolling stock for the railroad company from the liquidator?

Mr. CROMWELL. It would have no significance to me. It is a traffic question, or a business question, and it would have no particular interest to me.

Senator MORGAN. You think you would not recall it?

Mr. CROMWELL. It would have no particular interest, Senator, one way or the other. It would be a business question.

Senator MORGAN. Well, that was a very important transaction, was it not?

Mr. CROMWELL. I do not know how important it was. It was a transaction that speaks for itself. I was not counsel for the canal company at that time, you know.

Senator MORGAN. No; you were counsel for the railroad company?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. You have read all of the proceedings of the court in France that organized the New Panama Canal Company?

Mr. CROMWELL, No, sir.

Senator MORGAN. You have read the charter, as it is called, in that decree?

Mr. CROMWELL. Oh, yes; of course, I have read the charter.

Senator MORGAN. Well, you saw in that charter that the liquidator of the old company sold the railroad to the new company.

Mr. CROMWELL. He did not.

Senator MORGAN. What did he sell?

Mr. CROMWELL. The shares.

Senator MORGAN. He sold the shares?

Mr. CROMWELL. He sold certain shares; yes.

Senator MORGAN. How many?

Mr. CROMWELL. I think 68,534, speaking from memory.

Senator MORGAN. Out of 70,000?

Mr. CROMWELL. Out of 70,000; yes, sir.

Senator MORGAN. That left about 11,000 shares?

Mr. CROMWELL. One thousand one hundred shares.

Senator MORGAN. One thousand one hundred shares, I mean, that were in private hands?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. How many of those shares did you hold at that time?

Mr. CROMWELL. None.

Senator MORGAN. When did you acquire shares?

Mr. CROMWELL. I acquired 14 shares in March, 1893. I am speaking of the railroad company. You are, too, are you not?

Senator Morgan. Yes.

Mr. CROMWELL. March 31, 1893.

Senator MORGAN. Then when did you acquire the balance?

Mr. CROMWELL. As appears by the list which I have put in evidence here.

Senator MORGAN. The dates are given?

Mr. CROMWELL. The dates are given; yes, sir.

Senator MORGAN. What did you pay for those shares in the market?

Mr. CROMWELL. I have no recollection, Senator. It was a small lot.

Senator MORGAN. Did you pay above or below par?

Mr. CROMWELL. Probably par or somewhat below par.

Senator MORGAN. About how much below par?

Mr. CROMWELL. I have no recollection at all.

Senator MORGAN. Down as low as 65?

Mr. CROMWELL. I can look it up. I have no recollection.

Senator MORGAN. You have no recollection at all?

Mr. CROMWELL. No, sir; it was a little lot of 14 shares which I acquired for the purpose of being able to qualify myself as director, and anybody else in our party who had to be from time to time qualified as director.

Senator MORGAN. At the time of the transfer of these shares from the old company to the new, were you a stockholder in the railroad?

Mr. CROMWELL. I think that transfer occurred in 1894. If so, I must have been a shareholder of these few shares that I speak of, these 14 shares.

Senator MORGAN. Did you have any connection with the transfer of any stock?

Mr. CROMWELL. No, sir; not the remotest.

Senator MORGAN. Not the remotest?

Mr. CROMWELL. No, sir. I was not their counsel then. I did not know any individual connected with the canal company.

Senator MORGAN. Do you remember, as a fact, whether you bought your shares before the transfer by the liquidator of the old company to the new company?

Mr. CROMWELL. I have no recollection of the fact, one way or the other, Senator. It is a fact that I bought 14 shares on the 31st of March, 1893, and the rest of the record speaks for itself. I had no concern in the transfer of it from the old liquidator to the canal company, and nothing to do with the organization of the canal company.

Senator MORGAN. At the time you purchased your shares the liquidator of the old company was the majority stockholder in the railroad?

Mr. CROMWELL. The liquidator was a majority stockholder; yes.

Senator MORGAN. At the time you bought your shares?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. And at the time you became director in the railroad company?

Mr. CROMWELL. The liquidator was a majority stockholder.

Senator MORGAN. Yes.

Mr. CROMWELL. Yes, sir; the stock list here presented shows that.

Senator MORGAN. Yes; that appears.

Mr. CROMWELL. In the stock list which has been filed here.

Senator MORGAN. Did you go into that purchase for a speculation, or did you go into it for the purpose of getting position in the canal?

Mr. CROMWELL. The purchase of what?

Senator MORGAN. The purchase of that stock.

Mr. CROMWELL. You mean the 14 shares?

Senator MORGAN. Yes.

Mr. CROMWELL. Solely to qualify myself as a director.

Senator MORGAN. In what road?

Mr. CROMWELL. In the Panama Railroad Company.

Senator MORGAN. Oh, yes.

Mr. CROMWELL. I was elected director a few days thereafter, on April 3, 1893.

Senator MORGAN. You bought it for that purpose?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. It had already been intimated to you, then, that you would be a director?

Mr. CROMWELL. Yes, sir; I was asked to become a director.

Senator MORGAN. By whom?

Mr. CROMWELL. Some of the other directors of the company.

Senator MORGAN. Who was it?

Mr. CROMWELL. Mr. Drake and Mr. Boyard.

Senator MORGAN. Mr. Boyard?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. He asked you to become a director in the railroad?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. Who was Mr. Boyard?

Mr. CROMWELL. Mr. Boyard was the commercial agent of the liquidator of the canal company.

Senator MORGAN. So the commercial agent of the canal company asked you to buy stock and to qualify as a director in the railroad company?

Mr. CROMWELL. Not to buy stock, but they invited me to become a director in the railroad company.

Senator MORGAN. You could not get in without buying stock, could you?

Mr. CROMWELL. I am criticising your remark that they invited me to buy stock.

Senator MORGAN. Do not be too punctilious. I am trying to get at the truth. It may be that I stumble along a little bit, and I may not use exactly the form of English that suits you.

Mr. CROMWELL. You are sometimes inaccurate; that is all.

Senator MORGAN. Yes. Did Mr. Boyard ask you to buy that stock?

Mr. CROMWELL. No, sir.

Senator MORGAN. Did he inform you before you had bought it that he wanted you for a director?

Mr. CROMWELL. He had.

Senator MORGAN. What relation had he, then, to the Panama Canal Company?

Mr. CROMWELL. He was, as I just have said, commercial agent of the canal company in the United States, buying and selling its merchandise and shipping the same to the Isthmus.

Senator MORGAN. Was he a director in the canal company?

Mr. CROMWELL. No, sir.

Senator MORGAN. He was the agent, though?

Mr. CROMWELL. He was the commercial agent.

Senator MORGAN. Transacting all business of the canal company in the United States?

Mr. CROMWELL. I do not know what business he transacted.

Senator MORGAN. Is there anybody else that did transact any of it, within your knowledge?

Mr. CROMWELL. I do not know what business they had occasion to transact, except to buy and sell merchandise and ship it to the Isthmus for the construction of the canal, and that work he attended to for them.

Senator MORGAN. How long did Mr. Boyard continue in his connection with the Panama Canal Company after that?

Mr. CROMWELL. He continued as commercial agent, in the same relation, down to the time of his death.

Senator MORGAN. When was that?

Mr. CROMWELL. April 2, 1904.

Senator MORGAN. When did he become a director in the railroad?

Mr. CROMWELL. I do not know. Some years before I did.

Senator MORGAN. He was already a director in the railroad when you went in?

Mr. CROMWELL. He was.

Senator MORGAN. The understanding, then, must have been, I suppose, that if you would qualify yourself to become a director, the Panama Canal Company would put you in office as a director of the railroad?

Mr. CROMWELL. That was not the understanding, and you have no right to make the supposition.

Senator MORGAN. What was it?

Mr. CROMWELL. I was invited to become a director in the Panama Railroad Company.

Senator MORGAN. By Mr. Boyard?

Mr. CROMWELL. By Mr. Boyard, Mr. Drake, Mr. Simmons, and two or three other directors, and I insisted upon qualifying myself by

ownership of stock, so as to become a director bona fide and in law. I looked around to find stock to buy and came across these fourteen shares. There were very few lots for sale, and it was very seldom transactions in the stock occurred. I bought these few shares, and held them, to qualify myself.

Senator MORGAN. Immediately after you came into the railroad company in this way you became its general counsel?

Mr. CROMWELL. Not long after. I think it was in 1893 that I became counsel.

Senator MORGAN. So that part of the arrangement between you was that you would be general counsel?

Mr. CROMWELL. No, sir.

Senator MORGAN. It was not?

Mr. CROMWELL. It was not discussed or thought of.

Senator MORGAN. Did you have it in your mind at that time?

Mr. CROMWELL. No, sir.

Senator MORGAN. You at once became, also, after your qualification and election as a director, a member of the executive committee?

Mr. CROMWELL. Yes, sir; under similar invitation.

Senator MORGAN. Of whom did that committee consist at the time?

Mr. CROMWELL. I do not recall. The minute books will show. They are before you.

Senator MORGAN. These minutes are correct on that subject, are they?

Mr. CROMWELL. I have no doubt of their correctness.

Senator MORGAN. Do you recollect whether at your first appearance in the executive committee bonds were ordered to be issued and sold?

Mr. CROMWELL. I have no recollection of the transaction one way or the other.

Senator MORGAN. Was there any bonded debt of that company at the time you entered as director?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. How much?

Mr. CROMWELL. I do not know the amount. The reports will show.

Senator MORGAN. There was an outstanding bonded debt at that time?

Mr. CROMWELL. There was.

Senator MORGAN. What kind?

Mr. CROMWELL. The sterling mortgage bonds.

Senator MORGAN. What percentage did they draw?

Mr. CROMWELL. Seven per cent.

Senator MORGAN. What amount?

Mr. CROMWELL. The total authorized issue was $5,000,000, I remember.

Senator MORGAN. How much was issued?

Mr. CROMWELL. I do not know from memory. The annual reports are here, and I can get the figures in a minute.

Senator MORGAN. Had all those bonds been sold before you came in as a director?

Mr. CROMWELL. I have no recollection, Senator, about transactions of that kind.

Senator MORGAN. The books show it correctly?

Mr. CROMWELL. Whatever the books show they show it correctly, of course.

Senator MORGAN. Well, then, if bonds were issued on the day or very soon after you became a member of the executive committee, new bonds, additional bonds, what purpose were they issued for?

Mr. CROMWELL. I do not know. The minutes will state. The records of the company will show.

Senator MORGAN. Do you remember the issue of such bonds?

Mr. CROMWELL. No, sir; I have not the faintest remembrance of any such transaction.

Senator MORGAN. You do not remember having recommended it?

Mr. CROMWELL. I have no recollection about it, Senator. I would not be likely to have.

Senator MORGAN. After you got into that company, how many issues of bonds were made?

Mr. CROMWELL. I can not answer any question like that because I have no data with which to refresh my recollection.

Senator MORGAN. There were issues of bonds made after you came into the company?

Mr. CROMWELL. Probably, for the purposes for which they were authorized and the wants of the company. That was the business of the Panama Railroad Company and its stockholders.

Senator MORGAN. How many issues of bonds have been made by that company in all?

Mr. CROMWELL. Do you refer to the period of my acquaintance with it, or away back to 1850?

Senator MORGAN. I want to know how many issues of bonds have been made by that company in all? What are the different issues of bonds made by that company?

Mr. CROMWELL. There were some issued in 1850 or 1854. I have no present recollection of the amount or disposition. I know they were retired and became extinguished by the issue of what is called the 7 per cent sterling mortgage bonds, which was an issue of bonds existing when I became a director, in 1893. That issue of bonds was retired and canceled in 1897.

Senator MORGAN. The sterling bonds?

Mr. CROMWELL. The sterling bonds, yes, sir; and was supplanted by a reduced issue of bonds known as the present first mortgage bond issue. Those are the several mortgage bond issues of the Panama Railroad.

Senator MORGAN. Are they all?

Mr. CROMWELL. All; yes, sir.

Senator MORGAN. There were no bonds issued that were not mortgage bonds?

Mr. CROMWELL. There were the subsidy bonds, 6 per cent subsidy bonds issued in respect of the Colombian subsidy, of which a description has already been made here.

Senator MORGAN. You mean the subsidy to be paid to Colombia?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. Was that a mortgage bond?

Mr. CROMWELL. No, sir.

Senator MORGAN. There was no security given for it?

Mr. CROMWELL. Pardon me. I will give you the particulars of that in a moment. Any of these annual reports will explain it, I think. [After consulting report:] On November 1, 1880, there were issued $3,000,000 so-called 6 per cent subsidy bonds by the company, the

history of which has been explained a number of times, I think, in the course of these proceedings, but I shall be very happy to repeat it, if you would like me to do so. Upon these bonds no moneys were received by the company. They were issued to and for account of the Colombian Government as an amortization of the subsidy, which was to run in anticipation up to a period expiring in 1908. Under that concession the Panama Railroad Company is obligated to pay what we would call, in short terms, an annual rental of $250,000. By the terms of the concession, $25,000 of it was made payable direct to the department of Panama for its support; the $225,000 remaining was payable direct to the government at Bogota.

Under the terms of the same concession it was provided that whenever Colombia desired the railroad company was obligated to cooperate in the anticipation of these payments. Accordingly, in 1880, the Colombian Government requested the railroad company to give out evidences of obligation in respect of this $225,000 running up to the year 1908. The railroad company complied, and issued a series of bonds known as the 6 per cent subsidy bonds, so calculated, both as to the payment of the interest upon the issue, and an annual drawing of about 140 bonds, as to make the exact equivalent of $225,000 per annum that they were bound to pay. This was nothing more than a change in the form of payment. It was a convenient way by which Colombia could realize upon in advance and anticipate the payments coming to it. But the railroad company incurred no larger obligation, paid out no more money, than it was bound to pay by the terms of its concession annually.

The same documents provide that there shall be annual drawings by lot out of the mass of these bonds, and interest paid upon all the outstanding issue. As I have just said, the amount of these annual drawings and the amount of the interest together comes to $225,000. The railroad company is not obligated to make these payments, these drawings, nor pay this interest save only to an aggregate amount precisely the same as if it had drawn its check for $225,000 and paid it direct to the government at Bogota. The operation cost the Panama Railroad nothing. It was for the convenience of the Colombian Government and in pursuance of the obligations of the concession, which required the railroad company to facilitate this anticipation of payment to the Colombian Government. These annual drawings and payments have proceeded from 1880 regularly and without default, and by such operation these bonds, the original issue having been $3,000,000, have been now reduced to the sum of $533,000, of which the company holds $100,000 in its treasury.

Senator MORGAN. Mr. Cromwell, in virtue of the ownership of the great body of the stock of the railroad company by the Panama Canal Company, did not that Panama Canal Company have the absolute control of the railroad company, so as to require it to do anything within the limits of its charter that it desired to do?

Mr. CROMWELL. It had the rights of a stockholder, whatever those rights are, sir; no more, no less.

Senator MORGAN. As a matter of fact, did not that railroad company receive the instructions of the Panama Canal Company as being authoritative in the management of its affairs?

Mr. CROMWELL. No, sir; quite the contrary.

Senator MORGAN. Why so?

Mr. CROMWELL. Because of the independence of the board of directors and the very superior character of those gentlemen.

Senator MORGAN. Were the board of directors entirely independent of the canal company?

Mr. CROMWELL. They were all independent. The majority had no relation whatever with the canal company—not the remotest. The board of directors was composed of bank presidents or railroad men of high rank and great personal independence, as you can see from the list of directors.

Senator MORGAN. Did not the canal company have the power at any time to remove the directors?

Mr. CROMWELL. No, sir. They had power once a year to elect a new board of directors.

Senator MORGAN. But they had no power in the interim?

Mr. CROMWELL. They had no power in the interim, and never exercised it, in my observation.

Senator MORGAN. No; but they had it.

Mr. CROMWELL. They did not have it.

Senator MORGAN. They did not have it?

Mr. CROMWELL. They could not have it, under the law, and did not have it. There is no law of New York or any other State allowing stockholders to remove a board of directors during the year.

Senator MORGAN. The board of directors had frequent correspondence with the Panama Canal Company?

Mr. CROMWELL. I know nothing about that subject, sir. I do not think they did. I have no intimacy in the affairs of the company of that character.

Senator MORGAN. Through Mr. Boyard, as a director of the railroad and the general agent of the Panama Canal Company, did they not receive instructions as to the policy to be observed?

Mr. CROMWELL. I know nothing whatever about the subject, sir.

Senator MORGAN. Nothing whatever?

Mr. CROMWELL. Nothing; I had no occasion to.

Senator MORGAN. You mean that you do not recollect, or that you never did know?

Mr. CROMWELL. I have no recollection, and it would be none of my business to know.

Senator MORGAN. Well, then, if these books show that you did you would have to qualify that statement?

Mr. CROMWELL. Whatever the books show is correct, sir; and if you refresh my recollection I shall be happy to assist you.

Senator MORGAN. The Panama Railroad Company had various commercial relations through its traffic manager, and through the action of the board of directors, and also of the executive committee with transportation companies in various parts of the world?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. You knew what those relations were?

Mr. CROMWELL. In a general way, as any director would; yes.

Senator MORGAN. As a member of the executive committee, you know them particularly?

Mr. CROMWELL. As a director and as a member of the executive committee would.

Senator MORGAN. These records show a great deal of negotiation and correspondence between the railroad company and various other

transportation companies, contracts of various descriptions, particularly with the Pacific trade. Were not those contracts, as a rule, submitted to the approval of the Panama Canal Company?

Mr. CROMWELL. I think, never; never, with my knowledge, except as to the Pacific Mail contracts. I think that I have a general memory that t ose were Pacific Mail contracts, involving long terms of years and very important relations.

Senator MORGAN. That they were consulted about those?

Mr. CROMWELL. I think they were. I have heard from the officer that they were.

Senator MORGAN. If the board of directors was entirely independent of the canal company, why was this consultation made?

Mr. CROMWELL. Very properly so.

Senator MORGAN. State a reason.

Mr. CROMWELL. It was very proper for the board of directors to consult the stockholders. That was a very different thing from taking directions from them.

Senator MORGAN. Did you consult with any stockholders besides the anama Canal Company?

Mr. CROMWELL. I did not consult with any of them. It was not my business. It was not a part of my duty, Senator.

Senator MORGAN. You had no consultations with them at all?

Mr. CROMWELL. With whom?

Senator MORGAN. With the Panama Canal Company on the subject of these transportation contracts?

Mr. CROMWELL. I have had no conference with them upon any of the traffic contracts except, possibly, on the Pacific Mail. I think on some of my visits to Paris I have probably spoken about the Pacific Mail contracts, with no particular data before me, but as a matter of importance and interest.

Senator MORGAN. You do not remember writing any letters on that subject?

Mr. CROMWELL. No, sir; it was not in my department at all.

Senator MORGAN. Give your best recollection of that arrangement with the Pacific Mail, beginning with the first one that was in existence, if there was one, at the time that you became a director, and then coming on down with it. What were the changes that you remember to have taken place?

Mr. CROMWELL. I would not attempt to state from memory. Give me the contracts and I shall be very happy to give you my best impression from them.

Senator MORGAN. You have no recollection of the changes that were made?

Mr. CROMWELL. I have a recollection of some of the main features, of course.

Senator MORGAN. Well, let us have those.

Mr. CROMWELL. The first contracts with the Pacific Mail, I think, provided for a fixed subsidy.

Senator MORGAN. Was that in existence at the time you became a director?

Mr. CROMWELL. I do not recall, sir; but you can tell from the date of it.

Senator MORGAN. You have the date there, have you not?

Mr. CROMWELL. No, sir; I have not. Can you furnish it to me?

Senator MORGAN. I think it is in the book somewhere. You can take these minute books and look through them and see. You are familiar with them. Here are three volumes of them, and there are others. I would like to have you find out about that.

Mr. CROMWELL. I will do it with pleasure. I may be able to find it easier in some of the papers that I have here than by going through those volumes, Senator.

Senator MORGAN. Very well.

Mr. CROMWELL. I shall have to get the older reports. If it is material I will hunt it up. I can only tell by going through all these books, which will take some little time. I can find out for you during the recess.

Senator MORGAN. It will not be time wasted if we find out the business. Here are the books.

Mr. CROMWELL. There is a printed set of these books, in which it could be much more easily found.

The CHAIRMAN. What are you looking for?

Mr. CROMWELL. The Senator has asked when a certain contract was made, and I am trying to find its date.

The CHAIRMAN. It is in one of those books, probably.

Mr. CROMWELL. Yes; but the printed volumes are so much easier to look through.

The CHAIRMAN. I do not recall any other books that we have had from the Panama Canal Company.

Mr. CROMWELL. It is all in these books. I was merely trying to find a more convenient way of getting it. (After consulting minute books:) Referring to the minute book, Senator, my present impression is that that contract was in force when I became a director, for I note there was a controversy on with the Pacific Mail Company relating to the contract, and that the subject came before the board.

Senator MORGAN. Have you got a copy of the contract there?

Mr. CROMWELL. No, sir. We can get it for you. It is in the minute book.

Senator MORGAN. It is in one of these volumes?

Mr. CROMWELL. It must be in one of the volumes. I have not seen it there, but it has been printed in the Congressional Record a dozen times.

Senator MORGAN. For purposes of identification, state your recollection of the substance of that contract.

Mr. CROMWELL. I would not be willing to state from memory the substance of a contract so long ago as that.

Senator MORGAN. It was a very important contract, was it not?

Mr. CROMWELL. It was an important contract; certainly.

Senator MORGAN. It included the whole question of the transportation across the Isthmus between the Pacific and the Atlantic?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. And the railroad company made terms with the Pacific Company—what was the name of that company?

Mr. CROMWELL. The Pacific Mail Steamship Company.

Senator MORGAN. Who was the president of that company?

Mr. CROMWELL. Mr. Huntington.

Senator MORGAN. That is the one I referred to.

Mr. CROMWELL. The contract was made before I became a director. I had nothing to do with the making of the contract.

Senator MORGAN. Yes. That contract provided, if I remember it correctly, that a certain amount of space in the steamers between New York and Colon should be paid for or estimated, whether freight went in or not?

Mr. CROMWELL. In substance I think the contract provided that the Pacific Mail engaged to take a given amount of space and pay therefor a given sum of money.

Senator MORGAN. Whether any goods were sent or not?

Mr. CROMWELL. Whether they occupied it or not. That contract has been before Congress on two or three occasions. It is a part of the published records.

Senator MORGAN. You remember it as being set forth in the Fellows report, do you not?

Mr. CROMWELL. Yes, sir; and you have had it printed two or three times, I remember, Senator.

Senator MORGAN. The object of that agreement was to put it in the power of the Pacific Mail to control the commerce that passed across between San Francisco and the coast of the United States on the Atlantic side?

Mr. CROMWELL. I can not characterize the contract. It speaks for itself, Senator. I had nothing to do with the making of the contract. It was made before I became a director. I am one of the men that terminated the contract.

Senator MORGAN. You had a great deal to do afterwards with the extension and modification of it?

Mr. CROMWELL. I had a great deal to do with fighting against it.

Senator MORGAN. You did fight against it?

Mr. CROMWELL. I did.

Senator MORGAN. All the way through?

Mr. CROMWELL. I finally helped to terminate it.

Senator MORGAN. That contract was to the great advantage of the Pacific railways, was it not?

Mr. CROMWELL. Well, I do not know, sir. I can not characterize it. It was advantageous to the Panama Railway Company, and that is all I was thinking about.

Senator MORGAN. Was there any contract between the Pacific railroads for pooling the rates or their freights in connection with this contract?

Mr. CROMWELL. I have no knowledge of the subject.

Senator MORGAN. None whatever?

Mr. CROMWELL. None.

Senator MORGAN. Did you not know it at the time you were fighting it?

Mr. CROMWELL. I was informed that such agreements existed, and they have been published as a part of the records of Congress.

Senator MORGAN. They overruled you in your fight, did they not?

Mr. CROMWELL. Who?

Senator MORGAN. The parties concerned; the railroad directors and canal company, and so on.

Mr. CROMWELL. No, sir; we terminated the contract as soon as we could.

Senator MORGAN. And then renewed it again?

Mr. CROMWELL. No, sir; we terminated it as soon as we could advantageously terminate it, or safely terminate it.

Senator MORGAN. Well, it was terminated for a while and then renewed?

Mr. CROMWELL. I do not recollect the date, Senator. The record speaks for itself.

Senator MORGAN. Mr. Boyard being the representative of the Panama Canal Company, and being a director in the railroad company—were not consultations held frequently between the canal company and the railroad company on that subject?

Mr. CROMWELL. I do not know of any, sir.

Senator MORGAN. If those books show them, then they are all right?

Mr. CROMWELL. Whatever the books show is doubtless true.

Senator MORGAN. The railroad company continued to be an American company, notwithstanding its ownership by the canal company of France?

Mr. CROMWELL. It did. It was not owned by the canal company of France, Senator, as you know. The French company merely owned certain shares of the stock, and it did not change the legal character of the American company.

Senator MORGAN. I understand that; that if I own all of an apple except the stem, I own the stem, too.

Mr. CROMWELL. Your illustration is not happy, nor accurate.

Senator MORGAN. Well, make a more accurate one, defining exactly the situation.

Mr. CROMWELL. Because 99 per cent ownership of the stock is not 100 per cent ownership of the stock.

Senator MORGAN. It is within 1 per cent of it.

Mr. CROMWELL. It is within that 1 per cent that makes the difference, and makes your illustration a poor one.

Senator MORGAN. That was the difference in the effect, too, was it not?

Mr. CROMWELL. That is the difference in fact.

Senator MORGAN. And in the effect—in the control that the company had over the railroad?

Mr. CROMWELL. It had no control, other than I have described as a stockholder, electing a board of directors.

Senator MORGAN. In the power of control?

Mr. CROMWELL. It had the power of control in the election only of a board of directors. Subsequently it had no power over the board.

Senator MORGAN. You are now a director in the railroad company?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. Under the same New York charter?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. And with the same powers?

Mr. CROMWELL. The same powers.

Senator MORGAN. And you are in office?

Mr. CROMWELL. I am.

Senator MORGAN. And the President and the Isthmian Canal Commission could not turn you out?

Mr. CROMWELL. No, sir.

Senator MORGAN. So that, until your term of office expires, you are there for good and all?

Mr. CROMWELL. I am there until I wish to resign—until the next election, unless I wish to resign in the interval.

Senator MORGAN. When were you last elected?

Mr. CROMWELL. April of this year.

Senator MORGAN. Do you consider that as a director you have the right to disobey the orders of the Government of the United States in the conduct of the business of that railroad?

Mr. CROMWELL. Well, Senator, let us not get into academic questions.

Senator MORGAN. It is hardly an academic question when you say that you had that right in regard to the Panama Canal when it was the owner.

Mr. CROMWELL. I unquestionably should vote according to my own judgment upon any matters that came before the Panama Railroad board. No man would be fit to be a director who would not do so.

Senator MORGAN. And in defiance of the request or order of the President or Secretary of War?

Mr. CROMWELL. No; I should resign if I had such a request, and it was not in accordance with my own judgment.

Senator MORGAN. The only remedy the United States would have would be your resignation?

Mr. CROMWELL. It would have that mighty quick, and it would have a majority of the board, quite independent of me, Senator; so that my dissent would be impotent, even if I found reason to disagree.

Senator MORGAN. Are not the relations between the Government of the United States even firmer than were those of the Panama Canal Company and the railroad company?

Mr. CROMWELL. They are now, sir; because the Government now owns all the stock.

Senator MORGAN. It owns the whole business?

Mr CROMWELL. All except the qualification shares of the directors.

Senator MORGAN. Still the President would not have the power to order you to leave that board?

Mr. CROMWELL. He would not.

Senator MORGAN. Do you think Congress would?

Mr. CROMWELL. I do not.

Senator MORGAN. You do not?

Mr. CROMWELL. No, sir; speaking, of course, purely as a matter of law.

Senator MORGAN. That is what I am asking about—as a matter of law.

Mr. CROMWELL. Any director would be happy to retire upon the intimation of the Government at any instant. The office is purely honorary, without compensation.

Senator MORGAN. Neither Congress nor the President, then, would have the right to remove a recalcitrant director?

Mr. CROMWELL. No power of removal; no, sir.

Senator MORGAN. None whatever?

Mr. CROMWELL. No, sir.

Senator MORGAN. You are holding a pretty independent position, are you not?

Mr. CROMWELL. I am holding a very profitless one.

Senator MORGAN. But a very independent one.

Senator TALIAFERRO. Would that theory apply also to the officers of the railroad company?

Mr. CROMWELL. No, sir. The officers are subject to removal by the board of directors.

Senator TALIAFERRO. That is merely under the by-laws?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. You are an officer?

Mr. CROMWELL. I am not an officer; no, sir.

Senator MORGAN. Of the company?

Mr. CROMWELL. No, sir; I am simply an appointee. The general counsel are simply employed or appointed.

Senator MORGAN. So that they could remove you as general counsel?

Mr. CROMWELL. Oh, yes.

Senator MORGAN. But not as director?

Mr. CROMWELL. No, sir. I shall be very happy to resign whenever my services are not needed in any capacity.

Senator MORGAN. Well, we shall have to take that cum grano.

You are also a member of the executive committee?

Mr. CROMWELL. I am.

Senator MORGAN. Would the President or the Secretary of War have the right to remove you from that?

Mr. CROMWELL. The board of directors would.

Senator MORGAN. But not the President?

Mr. CROMWELL. The board of directors have power to change their committees and officers, and the majority of the board are the members of the Isthmian Canal Commission.

Senator MORGAN. So that if there should be an equal division in the board in regard to your removal from the executive committee, the one casting vote of your clerk, Farnham, could keep you there or turn you out of there, could it not?

Mr. CROMWELL. Well, Senator, do not let us trifle with business in that way.

Senator MORGAN. You need not be afraid of my trifling with this business. You will find out whether it is trifling or not sooner than you expect.

Mr. CROMWELL. Well, sir, the sooner you manifest it the better I will like it.

Senator MORGAN. What is that?

Mr. CROMWELL. The sooner you manifest your intimations the better I will like it.

Senator MORGAN. You decline to answer?

Mr. CROMWELL. No; I will answer, if you wish it—if you think it is important.

Senator MORGAN. Well, answer it.

Mr. CROMWELL. Such a contingency is impossible to imagine among gentlemen.

Senator MORGAN. Maybe we are not all of that cloth. I do not know. I am afraid there are a good many connected with the canal work that are not of that cloth. I would like to leave out the reference to "gentlemen" and say "men"—just "men."

Mr. CROMWELL. Yes, sir. I think you might enlarge your description a little.

Senator MORGAN. Yes; very likely. I do not choose to make any enlargement. I am examining a witness now, and I have my rights, and I intend to have them on this record, and make you responsible for these facts.

Mr. CROMWELL. I hope you will, sir; and I hope you will remember your own responsibility.

Senator MORGAN. That is all right. Now, answer the question. Could your clerk, Farnham, in the case of an equal division among

the board of directors, turn you out of that position or keep you in, at his pleasure?

Mr. CROMWELL. Mr. Farnham, like myself, would act upon his judgment as a director, and be responsible for it.

Senator MORGAN. Has he the power, under the by-laws and charter, to turn you out of that executive committee?

Mr. CROMWELL. You mean, sir, in the contingency mentioned of a tie vote?

Senator MORGAN. Yes.

Mr. CROMWELL. He would have the power, as a director.

Senator MORGAN. He is still your clerk?

Mr. CROMWELL. He is still in the service of my firm, of course.

Senator MORGAN. On a salary?

Mr. CROMWELL. Certainly.

Senator MORGAN. How much salary does he get?

Mr. CROMWELL. I think it is $3,500.

Senator MORGAN. How long has he been in that situation?

Mr. CROMWELL. A good many years.

Senator MORGAN. How many years?

Mr. CROMWELL. I have already testified about it. I think it is ten years or more.

Senator MORGAN. About how many years?

Mr. CROMWELL. I think it is over ten years, speaking from memory.

Senator MORGAN. There is a gentleman here who is a minister to this Government, Mr. Obaldia, who could treat you in the same way, could he not?

Mr. CROMWELL. He has the same powers and the same duties. Each director has exactly the same.

Senator MORGAN. What interest has Mr. Obaldia in this railroad except the mere fact that he has been elected a director?

Mr. CROMWELL. None.

Senator MORGAN. None whatever?

Mr. CROMWELL. None that I know of; no, sir.

Senator MORGAN. Are you still counsel for the mission from Panama to the United States?

Mr. CROMWELL. Yes, sir; on the same royal salary that I have already described.

Senator MORGAN. What was that?

Mr. CROMWELL. Of gratuitous service.

Senator MORGAN. You are volunteer counsel?

Mr. CROMWELL. I did not say volunteer.

Senator MORGAN. Well, are you?

Mr. CROMWELL. Am I what?

Senator MORGAN. Are you volunteer counsel to the Panama mission?

Mr. CROMWELL. I have not volunteered anything. I do not understand your term.

Senator MORGAN. You have been invited to take the position?

Mr. CROMWELL. I have been appointed by official decree.

Senator MORGAN. And you hold that appointment?

Mr. CROMWELL. Certainly.

Senator MORGAN. Without salary?

Mr. CROMWELL. I do. A salary has been offered me, and a salary has been declined by me.

Senator MORGAN. So that you are serving for the benefit of Panama?

Mr. CROMWELL. I am, and am glad to do it.

Senator MORGAN. And you are also counsel for the railroad company, under the employment of the United States?

Mr. CROMWELL. I am, sir.

Senator MORGAN. Serving for the benefit of the United States?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. In case of a conflict in your authority or conflict between the State of Panama and the railroad company, which master would you serve?

Mr. CROMWELL. If I could not do my duty according to my conscience, I should decline to act.

Senator MORGAN. It all hangs on your conscience?

Mr. CROMWELL. So far as my duties are concerned.

Senator MORGAN. Suppose your conscience permitted you to remain in office and continue service to both parties while they were in conflict; you would have the right to do so if your conscience permitted it?

Mr. CROMWELL. I would have the right to do so. Of course, I should resign upon the intimation of the Government.

Senator MORGAN. You are also now the counsel of the Panama Canal Company?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. And the situation would be the same in case of a conflict between the United States and the Panama Canal Company?

Mr. CROMWELL. No, sir; there is no controversy possible between the two.

Senator MORGAN. I understand there is a controversy now pending between the two.

Mr. CROMWELL. I do not.

Senator MORGAN. When was that controversy ended?

Mr. CROMWELL. On the 18th day of April last.

Senator MORGAN. You have been counsel engaged in prosecuting a demand for how many millions of dollars against the United States in favor of the Panama Canal Company?

Mr. CROMWELL. The United States was indebted to the canal company, according to the canal company's view, and my judgment, in about $2,200,000 for work performed by the canal company since the report of the Isthmian Canal Commission—additional work added to the canal. As has already been stated here, that subject was referred to the President of the United States as arbitrator, and the President of the United States has decided, as arbitrator, disallowing the account. The matter is disposed of.

Senator MORGAN. The matter has been settled within what period of time?

Mr. CROMWELL. The matter was disposed of on the 18th of April.

Senator MORGAN. By whose decree or order?

Mr. CROMWELL. By the President's.

Senator MORGAN. Is the claim abandoned?

Mr. CROMWELL. It is disposed of.

Senator MORGAN. Is it abandoned?

Mr. CROMWELL. Certainly; absolutely disposed of by the arbitration.

Senator MORGAN. You state, as counsel for the Panama Canal Company before this committee, that this claim is now abandoned?

Mr. CROMWELL. I have no right to state one way or the other about

it. The arbitration speaks for itself. The arbitration was a complete submission, and the arbitrator has decided the question.

Senator MORGAN. Is that arbitration in writing?

Mr. CROMWELL. It is.

Senator MORGAN. Where is it?

Mr. CROMWELL. The President has announced it.

Senator MORGAN. I have never seen any submission to arbitration. There has been a submission?

Mr. CROMWELL. It was submitted to arbitration, and your record here contains the form of it.

Senator MORGAN. Of the arbitration?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. Will you please be good enough to cite a record here that contains it?

Mr. CROMWELL. The record, I say.

Senator MORGAN. What record?

Mr. CROMWELL. Of this committee.

Senator MORGAN. On these hearings?

Mr. CROMWELL. I think so.

Senator MORGAN. I have never seen it. Do you state that that submission was in writing?

Mr. CROMWELL. It was.

Senator MORGAN. Who is it signed by?

Mr. CROMWELL. It is signed by the representatives of the Attorney-General.

Senator MORGAN. Who are they?

Mr. CROMWELL. Messrs. Russell and Day.

Senator MORGAN. When was it signed?

Mr. CROMWELL. In Paris.

Senator MORGAN. When?

Mr. CROMWELL. At the time of the transfer—the closing of the title.

Senator MORGAN. Those gentlemen entered into an arbitration at that time?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. By which a claim amounting to more than $2,000,000 was to be settled by whom?

Mr. CROMWELL. By the President of the United States, as sole arbitrator.

Senator MORGAN. Who signed it on the other part?

Mr. CROMWELL. I did; for the canal company.

Senator MORGAN. Oh, you did?

Mr. CROMWELL. For the canal company.

Senator MORGAN. You wrote the paper, then?

Mr. CROMWELL. The paper was agreed upon between the counsel.

Senator MORGAN. You wrote it?

Mr. CROMWELL. It was agreed upon between counsel in the United States before we went over, and was signed there.

Senator TALIAFERRO. Is there any objection to answering the Senator's question, Mr. Cromwell? He asked if you wrote it. I can not see any possible objection to answering that.

Mr. CROMWELL. I have no objection at all, Senator, to stating it if I knew. It is a very brief paper, and is not more than ten lines. It was a composition of the counsel.

Senator TALIAFERRO. I was speaking of his question.

Senator KITTREDGE. Is not that paper that you now refer to in the opinion of the Attorney-General on the question of title?

Senator MORGAN. No; it is not in there. I want to see it.

Mr. CROMWELL. It is in the report of the Isthmian Canal Commission.

Senator KITTREDGE. Nineteen hundred and four?

Mr. CROMWELL. In the minutes of the Isthmian Canal Commission.

Senator TALIAFERRO. Do you recall who drew up the submission?

Mr. CROMWELL. I do not, sir. It was a 10-line form, prepared by the Attorney-General and myself, and its language is very simple and nothing at all remarkable.

Senator MORGAN. By the Attorney-General do you mean Mr. Knox?

Mr. CROMWELL. I mean Assistant Attorney-General Russell, or Mr. Knox's assistant.

Senator MORGAN. Mr. Knox was not there?

Mr. CROMWELL. Well, it was an exchange of forms passing in his office. It has no significance.

Senator MORGAN. Mr. Knox was not there, Mr. Cromwell, was he?

Mr. CROMWELL. Mr. Knox was not personally present at the particular interview in which the form was prepared; but the form was in the hands of counsel of the Government from March until May—two months.

Senator MORGAN. You say the form was in the hands of the counsel for the Government for two months?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. The form which you prepared?

Mr. CROMWELL. The form that was agreed upon, Senator.

Senator MORGAN. When was it finally agreed upon?

Mr. CROMWELL. It was agreed upon March 10.

Senator MORGAN. Have you the paper?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. Please read it, so that the stenographer can take it down.

Mr. CROMWELL (reading):

DEPARTMENT OF JUSTICE,
Washington, D. C., March 10, 1904.

Mr. WILLIAM NELSON CROMWELL,
General Counsel New Panama Canal Company.

SIR: I have received your letter of the 9th instant concerning work done upon the Panama Canal since execution of the work included in the Isthmian Canal Commission's estimate of $40,000,000 as the value of the canal company's property.

The President directs me to say that, without committing himself to any proposition of fact or law stated in your letter, he is willing to determine what amount, if any, the company should receive on account of such work in addition to the price of $40,000,000 agreed upon.

Respectfully,

P. C. KNOX,
Attorney-General.

By W. A. DAY,
Assistant to the Attorney-General.

By CHARLES W. RUSSELL,
Special Assistant Attorney-General.

Signed at Paris, France, April 16, 1904.

Senator MORGAN. Now, please state the date of that letter again.

Mr. CROMWELL. It was agreed upon March 10, 1904, in Washington.

Senator MORGAN. And signed on what date?

Mr. CROMWELL. And signed in Paris April 16, 1904.

Senator TALIAFERRO. Now, where is the letter upon which that agreement was based?

Mr. CROMWELL. Shall I read it, Senator?

Senator TALIAFERRO. I do not care for it, Mr. Cromwell; I just want to know if it is in the record.

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. What are you reading from?

Mr. CROMWELL. I am reading from papers of my own, Senator.

Senator TALIAFERRO. Oh, yes.

Mr. CROMWELL. I have just had these printed for convenience in my work.

Senator TALIAFERRO. I do not care for the letter. Do you want it? (Addressing Senator Morgan.)

Senator MORGAN. Yes; I want it.

Mr. CROMWELL. On March 9 I had addressed to the Attorney-General a letter, of which the following is a copy:

WASHINGTON, D. C., *March 9, 1904.*

Hon. P. C. KNOX, *Attorney-General.*

DEAR SIR: In connection with the sale of the property of the New Panama Canal Company to the United States, permit me to state in writing what I have already stated to you in conversation concerning the construction work upon the Isthmus which the company has been performing while the isthmian canal question has been under consideration by this Government, and to present a general statement concerning such construction for which the company requests reimbursement by the United States, and also our proposal that the President act as sole and final arbiter.

The valuation of $40,000,000 which the Isthmian Canal Commission placed upon the canal company's property was based, as their reports state, upon only three items, viz:

(*a*) The maps, plans, etc, of the company.

(*b*) The shares of the Panama Railroad Company.

(*c*) The actual excavation useful according to the plan which the Commission adopted.

They expressly excluded from consideration:

(*d*) The value of any machinery and plant.

(*e*) The value of any supplies on hand; and

(*f*) The value of any buildings upon the Isthmus, while admitting that these items, (*d*) (*e*) (*f*) (especially the last), represented large value.

The company accepted the Commission's estimate without regard to the value of the machinery and plant (*d*), supplies (*e*), and buildings (*f*), and is now accepting for all its said property (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), the value estimated by the Commission for only a part of it (*a*), (*b*), (*c*).

As to two of the three items upon which the Commission's estimate was based—the maps, plans, etc. (*a*), and the Panama Railroad shares (*b*)—these represent property which has neither increased nor dimin-

ished materially, and as to which the Commission's estimates are the same that they would be if the valuation were made to-day.

With respect to the third item, however, the value to the United States of the excavation done by the canal company (*c*), the situation is wholly different. The method by which the Commission arrived at the value of this item is clearly stated in its reports, and was as follows: The Commission first, by careful computation, established unit prices for excavation, being the amount per cubic yard which it would cost the United States to do the work; they then ascertained the amount of total excavation done and deducted from this total the amount of excavation which, in their opinion, would not be of value to the United States upon the plan for the canal which the Commission adopted; then by a simple mathematical process applying the unit prices to the number of cubic yards of useful excavation, they computed what it would cost the United States to do this work (which the United States must have had done had not the company already done it), and the amount thus ascertained formed the value which they placed upon the work of excavation done. No account was taken of the actual cost of this excavation to the company, nor of the cost of any excavation not directly available or useful in the construction of the canal on the Commission's plan.

The Commission based upon this estimate their further estimate of the cost of completing the canal. They computed the total number of cubic yards of excavation, deducted from this total the number of cubic yards excavated by the canal company which were useful on the Commission's plan, and, applying again the same unit prices to this remainder, obtained their cost of completing the excavation.

Thus the amount at which the Commission valued the company's property upon the Isthmus was exactly determined by the number of cubic yards of excavation done so precisely that a single yard, more or less, of excavation done would have made an exactly proportionate change in the amount of that valuation, and likewise would have made an exactly proportionate change in the estimate of the cost of completing the canal. The cost of excavating every cubic yard of material beyond what the Commission found to have been excavated was an element in the cost of completion and was taken into account as something for which the United States must pay.

It was upon this same basis that the Spooner law proceeded. The amount appropriated thereby for the canal amounted to $175,000,000, of which $40,000,000 represented the Commission's estimate of the value of the company's property and $135,000,000 represented the Commission's estimate of the cost of completing the canal from the point at which the value, estimated as we have said, was $40,000,000. That is, the law expressly appropriates money to pay for all work done upon the canal after the excavation which the Commission took into account in fixing the value of the property. If the company had wholly ceased work at the time when the Commission obtained the data for its said estimate, then all work beyond that point must have been paid out of the $135,000,000 appropriated to whatever contractor the United States employed to perform this work. The law authorized and directed that payment be made for that work. To whom such payment should be made was and is a matter of no moment to the United States, nor does the law undertake to make any provision upon the point. But, in fact, the company did not cease work. To forward

the completion of this great work, to save precious time, and to prevent the great injury which would result from an abandonment of the work the company has, ever since the visit of the Commission to the Isthmus at which the data for its above-mentioned estimates were obtained, continued the work as it was then continuing it and has performed a large amount of additional excavation at its own expense as it had theretofore performed it.

The company has served a great national interest by proceeding with the work, and the United States derives the benefit thereof—and the consideration entitled to weight is the fact that by performing this additional work the company has to that precise extent shortened the time required for the completion of the canal.

All the work referred to in this communication was well and efficiently performed, was done in accord with the plans of the Isthmian Canal Commission, and was necessary and proper to be done in the execution thereof.

The United States, therefore, in now taking over the works receives the property in a very different condition from that in which it was at the date to which the Commission's reports refer. The company has performed additional excavation for which, had it been performed at the time of the Commission's examination, the Commission would have increased the valuation put upon the property, and the United States has not to perform to that extent the excavation included in the estimate of the cost of completing the canal for which it must have paid some other person had the company not done the work.

If this additional work were not to be paid for by the United States the appropriation would not have been $135,000,000, but as much less as such work amounts to; and payment for such additional work does not increase the appropriation by a penny, inasmuch as it is a part of the very work embraced in the estimate of $135,000,000, and consequently in the appropriation of that identical amount therefor.

Manifestly it would not be equitable that the company should be put to loss because it has aided in forwarding the completion of the work, and has facilitated the task of the United States. Manifestly it should not be expected to perform, without compensation, work for which any other person would be paid.

Early in 1903 I particularly invited the attention of the Government to this subject, and the President designated Admiral Walker, Professor Burr, and General Hains, of the Isthmian Canal Commission, to examine into and report to him upon the character, amount, and cost of such additional work performed up to that time and to supervise the future work and verify the past and future expenditure in that regard. The Commissioners visited the Isthmus and fully performed their task, the company, under my direction, having thrown open to them, without reserve, all accounts and records and submitted all officers and employees on the Isthmus to their examination. The company furnished them detailed accounts of all such expenditures and particulars as to the work performed. The Commissioners also established a systematic method of currently supervising and verifying the future work and installed their agents on the Isthmus for the purpose; regular current accounts have ever since been rendered by the company to the Commissioners (through their local agents).

This method is now prevailing, and is that under which the current work is being performed. The Government therefore is already

advised of the details of the company's past and current expenditures covered by this communication and all other information concerning the work. Thus, for the past year the work has been conducted under the supervision of the United States and with its approval.

The company respectfully requests reimbursement for such additional excavation work and proposes, as an equitable adjustment of the matter, that the President of the United States shall, as sole and final arbiter, conclusively fix and determine what sum, if any, in addition to the purchase price of its property the New Panama Canal Company is justly and fairly entitled to receive from the United States for the excavation work performed by the company since the execution of the work included in the Commission's said appraisal.

I have understood from you that this proposal has met the acceptance of the President, under your advice, and I shall be glad to receive your confirmation of the same.

I have the honor to be, yours, respectfully,

WM. NELSON CROMWELL,
General Counsel of the New Panama Canal Company.

That, gentlemen, is the letter which was answered by the Attorney-General, with the authority of the President, accepting the arbitration, and under which the arbitration was made, with the result I have stated.

Senator MORGAN. That paper, and the letter that you have read here just preceding it, constitutes the only submission to arbitration, does it?

Mr. CROMWELL. That constitutes the submission; yes, sir. Following it, of course, there were the proof of claim and the testimony, and all that.

Senator MORGAN. I know; I am talking about the submission to arbitration.

Mr. CROMWELL. Yes, sir.

Senator MORGAN. These two letters comprise the whole affair?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. In regard to the submission?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. Is there any proposition in there for submission to arbitration of the President?

Mr. CROMWELL. Yes, sir; I have just read it.

Senator MORGAN. Please read it again.

Mr. CROMWELL. "The company respectfully requests reimbursement for such additional excavation work, and proposes, as an equitable adjustment of the matter, that the President of the United States shall, as sole and final arbiter, conclusively fix and determine what sum, if any, in addition to the purchase price of its property, the New Panama Canal Company is justly and fairly entitled to receive from the United States for the excavation work performed by the company since the execution of the work included in the Commission's said appraisal."

Senator MORGAN. You consider, then, that the paper that was signed in Paris a month later than that, or something like a month later, more than a month, was an acceptance of your proposition?

Mr. CROMWELL. It was, sir.

Senator MORGAN. For a submission?

Mr. CROMWELL. It was.

Senator MORGAN. To the President of the United States?

Mr. CROMWELL. Yes, sir; and under which he has acted.

Senator MORGAN. Why was not that paper signed sooner?

Mr. CROMWELL. Because all the details of closing the title had not been agreed upon. It was naturally held in reserve until the United States was sure that it was going to acquire the property.

Senator MORGAN. Well, you adhere, of course, to the statements that you have already made here?

Mr. CROMWELL. What statements, sir?

(Senator Morgan examined the record of Mr. Cromwell's testimony.)

Senator KITTREDGE. Senator Morgan, would this be a convenient time for you to suspend for the day?

Senator MORGAN. Yes.

Mr. CROMWELL. Before you adjourn may I supplement the statement made a moment ago with reference to the directors of the Panama railroad—our powers and duties? We switched off from that topic, sir, in following these other topics. I had in mind to state something to you which I now beg the privilege of doing.

Responding to your question as to whether the directors could be removed, I must call to your attention the fact that the Government has absolute and complete power to displace a director, not by commanding him to retire, but by disqualifying him as a stockholder. The Government owns, under option, the share of stock held by me, Mr. Farnham, Mr. Obaldia, and all of the other directors, assigned by us, indorsed by us, and held by the Government under the option agreements which I described in my previous attendance here; and under that the Government can at any moment pay the small balance due under the option, exercising the option, take to itself the share of stock, transfer the share of stock on the record, and in an instant each of us disappears as a director of the company, because we become disqualified to act.

Senator MORGAN. How much is that balance?

Mr. CROMWELL. Ninety dollars.

Senator MORGAN. So the Government of the United States by paying you $90 could, then, remove you from the office of director?

Mr. CROMWELL. Absolutely—not by technical removal; it disqualifies me as a director, which operates to remove me from office.

Senator MORGAN. I should think if you are disqualified you are removed.

Mr. CROMWELL. Yes, sir. I am simply making a distinction.

Senator MORGAN. And the Government could not do it without paying you that $90?

Mr. CROMWELL. No, sir. I hope the Government is able to do it.

Senator TALIAFERRO. Mr. Cromwell, do you know no process of law by which the holders of 99 per cent of the stock of a corporation could remove a board of directors who were conducting the business of the corporation in a way unsatisfactory to them?

Mr. CROMWELL. There is no law, sir, of the State of New York that would authorize it, except for—not to remove; no, sir. I still say no; but there would be this procedure, Senator: In cases where directors may abuse their trust——

Senator TALIAFERRO. Yes; that is what I refer to.

Mr. CROMWELL. Then, upon a bill in equity filed by a stockholder, the supreme court of New York would not only enjoin the directors

from pursuing an improper course, but could appoint a receiver over the corporation to enforce and to prevent the threatened wrong; and the Federal courts, of course, have similar power.

Senator MORGAN. Suppose the stockholders of this corporation should become satisfied that a director, in virtue of his official relations to the railroad company, was embezzling the money of the company, and had embezzled it—could not the stockholders' meeting remove that director?

Mr. CROMWELL. No, sir; not under the law, Senator. But the remedy then would be instantly by receivership; and in this case——

Senator MORGAN. It might be done if you had a fair judge.

Mr. CROMWELL. And in the case of the United States, always keep in mind that the Secretary of War has surrounded this question with the greatest caution by holding every share of stock of each director, under the option agreements I have described to you, and with the power upon his own part to immediately cause those stock shares to be transferred out of the name of the director in whom they are vested, to divest him of his position, and to disqualify him as a director in an instant.

Senator MORGAN. Do you think you understand fully, Mr. Cromwell, the relations that the board of directors now hold to this railroad company under the United States? Do you think you understand it fully?

Mr. CROMWELL. I do.

Senator MORGAN. I supposed you did, because the Secretary of War intimated, if he did not say, that you drew it. Was that a fact?

Mr. CROMWELL. Drew what?

Senator MORGAN. The plan—that you were the author of the plan.

Mr. CROMWELL. The plan of what?

Senator MORGAN. By which this optional agreement to remain in there was made.

Mr. CROMWELL. I have already described the agreement, and I have already given its substance, and I have already told you that I had prepared the paper in concert with the Secretary of War.

Senator MORGAN. Yes; you prepared it, and then conferred with him about it?

Mr. CROMWELL. I prepared it in concert with him, and in a form which is quite customary, as I described, in corporation matters.

Senator MORGAN. Well, I am glad to know that you and he are in accord about it. It gives great strength to his opinions.

Mr. CROMWELL. I drew it in accord with him and in pursuance of his instructions. There is nothing remarkable about the form of the agreement.

(The committee thereupon adjourned until to-morrow, Thursday, May 10, 1906, at 10.30 o'clock a. m.)

The following papers are printed by order of the committee:

WAR DEPARTMENT,
Washington, May 7, 1906.

MY DEAR SIR: I beg herewith to transmit to you for printing in your record of evidence a report made to me by the chairman of the Isthmian Canal Commission with reference to the conditions on the Isthmus as found by him on his recent visit.

Very respectfully, yours,

WM. H. TAFT,
Secretary of War.

Hon. J. H. MILLARD,
Chairman Committee on Interoceanic Canals,
United States Senate.

ISTHMIAN CANAL COMMISSION,
Washington, April 23, 1906.

SIR: I have the honor to advise you as follows in regard to the results of my observations during a trip to the Isthmus of Panama, from which I returned on the 22d instant:

THE WATER SUPPLY.

One of the first things brought to my attention upon arrival on the Isthmus was the condition of the water supply at Colon. Chief Engineer Stevens reported that the present dry season had extended over a period longer than any other during the past twenty-five years. As a result streams available for water supply were lower and the fear of a possible water famine greater than for many years. While the reservoirs supplying the districts of Panana, Empire, Gorgona, and Bas Obispo contained sufficient water for many months to come, the stock of water in the reservoir supplying the district of Colon had become reduced to 1,500,000 or 2,000,000 gallons Therefore, as a means of impressing upon persons residing in that district the danger of extravagant use of water, Mr. Stevens equipped a water train, erected three temporary water stations in the Colon district, and began hauling into that district 250,000 gallons per day for daily consumption, holding the supply in the reservoir for a possible emergency. This means of adequately meeting the daily needs will be continued until the rainy season again provides an exhaustless supply through the use of the reservoir system.

In this connection it may be stated that a short time ago the water supply of the district of Colon, which had been owned and operated by the Panama Railroad as a commercial proposition, was transferred to the jurisdiction of the Canal Commission, and the Commission, following the policy adopted upon the completion of the waterworks system of the district of Panama, ordered that water be furnished free to persons living in the district of Colon. The emergency measures above outlined, to provide sufficient water, resulted in no change in this policy, and the inhabitants continue to be furnished water free of cost. My attention being called to statements circulated to the contrary, an inquiry developed that a certain hotel keeper in the district of Colon had incurred expense in providing water for his guests.

This, however, was because of his desire to serve a particular kind of water to be found upon the line of the Panama Railroad. An arrangement was accordingly made with the Panama Railroad, for which service he paid a nominal transportation rate. He could, however, have availed himself of the regular water supply without cost, if he so desired.

The reservoirs created for distribution of water in the districts above mentioned have capacities as follows:

	Gallons.
Panama	800,000,000
Empire	850,000,000
Gorgona	500,000,000
Colon	850,000,000

Bas Obispo: Unlimited supply from perpetual running stream.

HEALTH CONDITIONS.

Under the direction of Governor Magoon health conditions on the Isthmus are most satisfactory. Notwithstanding the fact that there are more employees and their dependents on the Isthmus than ever before (the monthly pay rolls showing from 22,000 to 23,000 employees, with a daily effective force of about 16,000 or 17,000) there were fewer patients in hospital than for many months past. Doctor Gorgas reported 450 beds vacant in hospitals. There has been no authentic case of yellow fever since last November. Mosquitoes are so scarce that many persons sleep in unscreened houses and discard mosquito netting without incurring personal discomfort. Doctor Gorgas is sanguine that he has the health situation so well in hand that no epidemic can arise within the Canal Zone. The danger can come only from the outside. The question of quarantine is therefore of paramount importance, and is receiving the earnest attention of the health department. Following a case of yellow fever recently occurring at Bocas del Toro, on the Carribean coast, 159 miles distant from Colon, an officer of the sanitary department was sent to that port to take charge of its sanitation, at an expense to the Commission of not to exceed $500 per month. This action was not taken, however, until after a conference with the officials of the Republic of Panama, who are willingly cooperating in the matter. It is considered wise, as an additional quarantine precaution. As an evidence of the general health conditions Doctor Gorgas stated the rate of sickness was only 20 per thousand.

FOOD AND QUARTERS FOR EMPLOYEES.

Under the direction of Chief Engineer Stevens, through the building department, the policy adopted to provide for the employees suitable quarters in which to live has been carried forward with great vigor. The building department has not only provided ample quarters for the existing force, but at this time has a reserve sufficient to accommodate 3,000 additional laborers. It has also provided suitable quarters for all American employees who may now be living in Commission houses, except in isolated cases where economic and other conditions may make a change undesirable.

Under the direction of Chief Engineer Stevens, through the labor and quarters department and the commissary of the Panama Railroad, the policy adopted to provide suitable food at reasonable prices, while

not yet satisfactorily effected, has nevertheless made great progress. So far as the common laborers are concerned, uncooked food is obtainable at reasonable prices from the commissaries of the Panama Railroad. Mess kitchens have been created at the different labor camps, where wholesome and nourishing meals may be obtained by such laborers at a cost of 10 cents each, and at this price a small marginal balance in favor of the Commission is left.

It is a deplorable fact, and one difficult to account for from the American point of view, that these laborers do not avail themselves of this privilege except in small numbers. This is not due, it is believed, so much to penuriousness as to a desire to indulge in eatables less suited to their physical needs, and to gratify other desires. To meet this condition, because of its direct and immediate effect upon the efficiency of the labor, the executive committee has authorized the chief engineer to insert in all future labor contracts a proviso whereby the employee agrees to permit a fixed amount to be deducted from his daily wage, in consideration of which he is to receive three wholesome and nourishing meals a day. The establishment of this method of overcoming the harmful attitude of the common laborer toward his physical needs must be gradual, and it has, therefore, been left to the chief engineer to fix the times and places when it shall become operative among the various consignments of labor and labor camps.

With respect to the American employees, progress continues to be made in providing them with wholesome food of a character to which they are accustomed. Refrigerator cars of the most improved type are now in operation on the line of the Panama Railroad; a temporary cold-storage plant is in successful operation at Colon, and plans for a permanent plant on a much larger scale are well under way. Refrigerating plants have been installed on two of the steamers of the company operating between New York and Colon, and a plant will be installed on a third within the immediate future. A line of refrigeration has, therefore, been established between all points in the United States and the various districts within the Canal Zone, thus placing within the reach of all classes of employees perishable and other food supplies of the character to be found in the United States. The first consignments of American meats have been successfully distributed along this line of refrigeration. The first consignment of vegetables and similar food stuffs did not meet with equal success, possibly due to the state of the vegetable market at home when such consignment was made.

Nine large mess houses (or hotels) are maintained at as many different points along the line, where nourishing meals are served in clean surroundings at a cost to employees of 30 cents each. In the inauguration of the policy of furnishing meals to the American employees at this price a loss was sustained by the Commission, it being a well-known fact that all work in its formative period, with inexperienced help in many instances, must be carried on at greater cost than prevails after an organization has become more efficient. Figures for the latest month available, however, show that these meals are now being furnished to the American employees at 30 cents each without additional charge against the funds of the Commission.

In addition to the maintenance of these mess houses (or hotels) the American employees are permitted to buy uncooked food supplies from the commissaries of the Panama Railroad and may also secure meats

and other perishable foods through the medium of the line of refrigeration above mentioned. The charge to employees for such supplies is that paid by the Commission plus a fixed percentage to cover the expense of transportation and distribution.

Additional mess houses or hotels are well under way and a continued improvement in this service will be brought about during the next few months. In this connection particular mention should be made of the Tivoli Hotel, situated on Ancon Hill, containing 160 sleeping apartments, many of them with private baths. The structure is completed and the hotel will be ready for occupancy as soon as the interior fittings and furnishings can be installed.

TERMINAL, YARD, AND TRACK FACILITIES.

Under the direction of Chief Engineer Stevens the policy adopted to create proper terminal, yard, and track facilities for the economical reception and distribution of the vast amount of supplies entering into the construction of the canal, to provide for the disposal of excavated material, and to secure the proper power, equipment, and machinery for the economical handling of the same, is being carried out with great vigor. In line with the expressed intent of this general policy the work on the docks and wharves situated within the limits of the city of Colon has been limited to making existing facilities effective. Additional docks, wharves, and other terminal facilities are being constructed at Cristobal (which is within the Canal Zone, on the Atlantic side) and at La Boca (within the Canal Zone, on the Pacific side).

New dock No. 11, in Cristobal, is completed, except the overhead shed, and is now being used by the largest ships.

New dock No. 14, in Cristobal, is completed. With the completion of about 250 feet of dredging by the end of this month there will be a 27-foot channel up to and alongside of those two docks, and an additional dock is to be constructed in this channel between docks 11 and 14. A stationary crane on dock 11 and a moving crane on dock 14 have been installed and are doing effective work. These two docks each provide berthings for two ships.

The new dock at La Boca is completed, and is connected with the steel dock which formerly existed, thereby providing berths for three additional ships. Contingent upon type of canal, it is the intention to build an addition alongside the old steel dock at La Boca, as that dock does not possess sufficient strength to withstand the strain following the use of the heavy power and equipment now being operated on the Panama Railroad. If this is done the existing steel dock will be turned into a warehouse and wharf for trucking purposes only.

The large terminal yard at Cristobal is well advanced toward completion, the main and leading tracks being laid, and it only remains to connect the switching tracks between them.

The new machine and erecting shops, coaling station, transfer pits, turntable, etc., are nearing completion. When these enlarged and improved facilities are completed it is hoped that the Panama Railroad shops now located within the city of Colon may be dismantled and that all the work may be concentrated at the new shops in Cristobal.

The main receiving and forwarding yards at Bas Obispo, on the Atlantic side of the divide, and at Pedro Miguel, on the Pacific side,

which are to receive the dirt trains moving down from the various levels of Culebra Cut, there to be switched and forwarded over the main line of the Panama Railroad for final disposition, are well under way.

Several miles of the double tracking of the Panama Railroad main line have been laid, and the grading for more is advancing rapidly. Much of the material for the double tracking which has not been laid is on the ground, available for use as fast as the grading is completed. The necessity for this double tracking, especially north and south of the two yards whence the dirt trains will come onto the Panama Railroad main line, is becoming urgent, as will be seen from the fact that recently 148 train movements were made over one section of the road in one day.

WORK IN CULEBRA CUT.

The work of putting Culebra cut in shape for the approaching wet season, as well as for the installation of the largest possible number of steam shovels on a systematic plan, has been steadily carried forward. All the barriers across the cut left by the French have been removed, and not only have tracks been laid and ballasted on each level, but for most of the way through the bottom of the canal prism a well-ballasted double-track line has been constructed. About 80,000 yards of the dirt slide have been removed, leaving a berm 150 feet wide back from the slope of the canal prism, so that if this slide continues to come down none of it will push over into the prism, as it has done heretofore. Following this same rule, in two or three years more the entire slide will have been removed. Clay on the top of the cut on the other side of the prism, which can not well be handled during the wet season, has also been removed wherever there was danger of the side of the cut going far enough back to permit this clay to slide into the prism this season. This work is so well along that if the present good weather should continue two or three weeks more Culebra cut will be in such shape as to permit of the removal of the largest quantity of material during the wet season without danger from any of the mishaps from slides or derailments due to bad tracks which have heretofore been attendant upon such efforts.

Chief Engineer Stevens during the month of March, without making any special effort, but following the general policy of work herein outlined, removed 240,000 cubic yards of material, with an average of 10.7 steam shovels working. The reports up to the 15th of this month indicate a still greater degree of efficiency in excavation. He believes that by July or August he will have forty shovels installed, and will be in a position to remove approximately 1,000,000 cubic yards per month. The actual cost for material handled during March, figuring in contractor's expenses, was 53½ cents a cubic yard.

MATERIALS AND SUPPLIES.

Under the direction of Mr. W. G. Tubby, head of the division of material and supplies, appointed some five or six months ago, order and system prevail in this important work. Materials and supplies on hand have been inventoried, new storehouses constructed, lumber yards provided, and a system established whereby Mr. Tubby knows every day exactly what materials and supplies he has on the Isthmus

and where they are located. The danger of duplication of orders has been removed; and although materials and supplies have been received in larger quantities than ever before they have been handled with expedition and at greatly reduced cost. Under Mr. Tubby's administration bills for materials and supplies received are checked and returned to the United States for voucher and payment by the next steamer after their arrival. The improvement in this department during the past few months has been phenomenal.

WORKING FORCE.

The working force of the Isthmian Canal Commission as of date April 1 was distributed broadly among the different departments as follows:

Government and sanitation	2,845
Materials and supplies	1,670
Auditing and disbursing	90
Engineering and construction:	
Administration (including care of quarters)	460
Municipal engineering (in charge of construction of water supply, sewerage, roads, etc.)	3,295
Master builder (in charge of houses and quarters)	2,946
Motive power, shops, etc	1,521
Culebra division, canal	3,103
La Boca division, canal	384
Cristobal division, canal	433
Chagres division, canal	134

Following the instructions left by me in October to all heads of departments to grade positions and employments and establish salaries and wage scales with the object in view particularly of doing away with the two bases of pay for common labor, established before the advent of the present Commission—that is, 20 and 26 cents, silver, per hour. I find that this change has been gradually brought about without any serious friction or trouble. At the time of the promulgation of this policy over 50 per cent of the total of the labor pay rolls was on the basis of 26 cents per hour, whereas at this time only 1,500 men are reported at this maximum rate of 26 cents out of a total of 9,000 in the engineering department, and I am informed that a similar percentage obtains in other departments.

The morale of the force and its efficiency continue to improve. As the employees in all the departments get more familiar with the work required of them and as the organization becomes more settled a corresponding increase in the effectiveness of the force follows, as is shown by increased work at a less cost than before.

This is even true, to a more or less extent, of the common laborers from the West Indian Islands. As the American foremen become more accustomed to their ways and understand better how to handle them, and as the common laborers become more familiar with the work that is expected of them, they are taking more interest in the work, and becoming somewhat more efficient. However, it is not expected that any high degree of labor efficiency will be developed until a better class of labor is introduced.

LAW AND ORDER.

Law and order continue to be maintained to a degree that would be remarkable under any conditions, and is especially so when the character of the population of the Zone is considered, with its vast army

of 23,000 employees, gathered from all parts of the world. Under the administration of Governor Magoon the police force is so vigilant and so efficient that good order is steadily maintained, serious crime is almost unknown, and arrests are mainly for petty offenses and violations of the sanitary laws.

RECREATION FOR EMPLOYEES.

During a former visit to the Isthmus the Commission was accompanied by two special employees, recommended to it by civic organizations in this country, for the purpose of systematically approaching the important question of providing proper diversion and social recreation for the American employees on the Isthmus. Conditions at that time, however, were such that every energy had to be directed toward the more necessary and vital work of providing proper housing and feeding facilities for the employees, and the work of providing diversion and social recreation was at that time passed over. It was, therefore, very gratifying to see on this trip that the American employees had taken up this question themselves and organized clubs at various labor centers.

It was my pleasure to attend an entertainment given by a club composed of representatives of the various kinds of skilled labor, and of office men, located at Corozal. The entertainment was well attended and of a high class throughout, and if it is indicative of what is being done by other clubs on the Isthmus, this important question of social recreation and diversion will solve itself. The men, with true American spirit, evidently appreciate that those things which are the outgrowth of our own desires, and achieved by our own efforts are, in the long run, more lasting and more satisfactory. The Corozal Club was, however, assured, and through it the other clubs along the line, that the Commission had not lost interest in the matter, and would gladly cooperate in providing clubhouses and such furnishings as would be proper and right for it to provide.

CIVIL SERVICE EXAMINING BOARD ON THE ISTHMUS.

The United States Civil Service Commission having expressed a desire to visit the Canal Zone for personal observation as to the application of civil-service principles to employees located on the Isthmus, an invitation was extended to that Commission to accompany me; and in accordance therewith Commissioner Cooley and Chief Examiner Kiggings were present during a portion of my stay on the Isthmus. Mr. Pepperman, the assistant chief of the Washington office, and in immediate charge of relations with the Civil Service Commission, also accompanied me.

While on the Isthmus Messrs. Cooley and Kiggings made examination as to the character of work exacted of employees and the conditions under which they serve and consulted freely with heads of departments and subordinate chiefs located on the Isthmus. As a result, aside from affording a better understanding of the existing rules and regulations, it was decided to establish on the Isthmus a local examining board, to be composed of canal officials acting under the Civil Service Commission, for the purpose of testing the fitness for appointment to positions subject to the civil-service requirements of those

persons who may of their own accord appear upon the Isthmus and who are believed to be fitted and whose services are needed by the local officials. This board will also test fitness for the transfer or promotion of persons serving on the Isthmus in employments not subject to civil-service rules to positions which are subject to the rules when such change in the duties of an employee is in the interest of good administration. The eligible lists resulting from these examinations held on the Isthmus are to be separate and distinct from those resulting from examinations held in the United States.

Changes in the character of the examination given by the Civil Service Commission for appointment to the position of clerk, with a view to securing as a result of such examination persons experienced in different lines of clerical work, were suggested and will be adopted.

NEW MONETARY ARRANGEMENT.

The monetary agreement entered into with the four principal bankers of the Republic of Panama, under which the disbursing officers of the Commission have been furnished with funds to meet payments, expires by limitation on April 29. While this agreement has worked fairly satisfactorily, there has been a constantly increasing scarcity of Panamanian silver. This matter was carefully gone over in conference with all the heads of departments on the Isthmus, the gist of which was communicated to you by cable.

To obviate the disastrous results which would follow in the event of failure on the part of the bankers to furnish the disbursing officer funds in exchange for his drafts against New York, and with your approval, the disbursing officer has been authorized to import United States coinage and currency from the United States when necessary to meet the obligations on the Isthmus. This is now possible because it has been ascertained by experience that laborers on the Isthmus who have been accustomed to receive their wage in silver have now learned of the relative value of American gold, and gladly accept the same. In fact it is stated that the laborers paid in silver oftentimes convert this coinage into that of the United States through local banks on the Isthmus for remittances. It is believed that there will be no difficulty whatever in meeting the major part of the pay-roll obligations with American gold, and also with paper money.

PANAMA RAILROAD AND PACIFIC MAIL.

I met on the Isthmus by appointment Mr. R. P. Schwerin, vice-president and general manager of the Pacific Mail Steamship Company, for conference relative to the interchange of traffic between the Panama Railroad and Steamship Line and the Pacific Mail Steamship Line. Mr. Schwerin was accompanied by Mr. J. Kruttschnitt, transportation director of the Harriman lines, and Mr. C. W. Jungen, general manager of the Atlantic steamship lines of the Southern Pacific Company.

In company with General Manager Stevens and Superintendent Bierd Mr. Schwerin and his party were shown the terminal and transportation facilities of the Panama Railroad for handling cargo, and the method followed in the handling of such business was explained to them.

The subsequent conference resulted in a settlement of all points of

difference, and an agreement was reached between the two companies to work in harmony in the interest of the entire route.

This joint inspection of facilities and conference disclosed the fact that since the middle of December there has been no congestion of freight on the Isthmus, and that with the gradual completion of additional docks and wharves now building, and the gradual increase of larger equipment and heavier power now arriving, the possibility of another freight blockade or congestion grows less and less. In fact, it was the consensus of opinion that in view of what had already been accomplished by the Panama Railroad in enlarging and bettering its facilities and equipment, prompt and satisfactory interchange of traffic was to-day more a question of disposition on the part of the two interests to work in harmony than of additional tools with which to work. If the agreement made by both parties to cooperate with each other in making a success of the route is adhered to, misunderstandings and freight congestion should be things of the past.

As an evidence of the improved efficiency of the Panama Railroad and its terminals, it may be stated that the steamers of the Panama Railroad operated out of New York, with sailings every five days, are promptly discharged and loaded on arrival at Colon, and the schedule is properly maintained, an accomplishment, I am advised, that has not heretofore been possible with the tonnage now being handled.

Vice-President and General Manager Stevens has created an entirely new organization of the personnel of the Panama Railroad, with a distinct assignment of duties to the head of each department, which became effective March 1. Superintendent Bierd's course for several months following his appointment, in digging into the details of each and every department of the railroad, has put him in personal touch with and given him personal knowledge of every feature of the work, and has enabled him to begin to build up an organization which promises great efficiency.

It must be remembered that railroading on the Isthmus is an entirely different proposition from railroading in the United States. An official on the Isthmus has no outside sources from which to draw men or materials. He must depend largely on what is there and what he can create from what is there. As an illustration of the conditions under which the officials must perform their work, I wish to cite an incident related to me by Mr. Stevens. In order to protect the trains, the movements of which were growing denser and denser, a system of block signals was created, and a telegraph operator, whom they trained to the duties of his position, was placed in each blockhouse. One morning, without any warning, seven of these operators resigned and left for the United States. As a result of this, train service was disarranged and the block system had to be in part temporarily abandoned, because there was no supply of operators near at hand from which to draw to fill the places of those who had quit.

In order to relieve Vice-President and General Manager Stevens of some of the details incident to the operation of the Panama Railroad, and as a merited reward for efficient service, Mr. Stevens's recommendation that Mr. Bierd be promoted from superintendent to general manager of the road has been approved.

While much has been said and done with respect to freight traffic, the growth of the passenger traffic has also become very great, and with the increasing number of employees it will continue to grow.

The present passenger equipment consists of small coaches hauled by light passenger engines.

Six large new passenger coaches, ordered to be built some time ago, are about due on the Isthmus, but more will be required. Vice-President Stevens was therefore requested to study the situation and make requisition for such equipment as he thinks necessary to take care of the constantly increasing passenger business. Larger passenger cars will not only enable us to haul more people in each car, but, by using larger engines, to haul many more people in each train, and thus prevent what would otherwise result in a very large increase in the number of our passenger trains. With the present heavy and continually increasing train movements, this is a thing much to be desired. We now have four through passenger trains each way a day, hauling from five to seven cars each, and yet passengers are frequently required to stand in the aisles or on the platforms, which, of course, is not good railroading.

COMMISSARIES.

The commissary department of the Panama Railroad had outgrown the ability of the man in charge of it, and General Manager Stevens therefore, sometime prior to my arrival, had made a change in that office. It is now administered by a person believed competent to successfully handle this branch of the work.

It will be recalled that when the commissaries of the Panama Railroad were thrown open last summer to all classes of employees a system of coupon books was devised and issued to employees on demand, up to a fixed percentage of their accrued wage. The commissaries were made available to all classes of employees in order to place within their reach food supplies at reasonable prices, and the use of coupon books was resorted to as affording a medium of purchase to such employees as could not adjust the purchasing power of their monthly wage from pay period to pay period.

Shortly after the adoption of this policy, as a concession to the merchants of the Republic and the Zone, an arrangement was made whereby these coupons could be used in the purchase of goods from such merchants and would be redeemed upon presentation to the railroad company. It has developed, however, that this practice has led to many abuses; that the privilege has not secured the benefits sought for by legitimate merchants, except in a small degree, and that these coupons have placed temptation for fraud in the way of the employees. Therefore, at a meeting of the executive committee of the railroad, on the Isthmus, it was decided to withdraw this privilege from the merchants of the Republic and the Zone and limit the use of the coupon books to the original intent of aiding employees in the securing of food supplies from the commissaries of the company. This action will take effect as of May 15, 1906.

CONSOLIDATION OF OFFICES.

Immediately prior to my sailing for the Isthmus Local Auditor Starke was summarily removed from office for misconduct, and pending my arrival Disbursing Officer Williams was designated as acting local auditor in addition to his other duties. Upon arrival on the Isthmus, and as a result of a conferenee with General Auditor Benson

and Disbursing Officer Williams, and after securing the views of other heads of departments, it was decided to vest the control of these two offices in one official under the title of disbursing officer and local auditor. Such action will obviate certain duplication of work, particularly in respect to checking the pay rolls, and will undoubtedly facilitate the payment of the enormous pay rolls following the expiration of the pay period; in fact, it was possible at the first pay period following the change to begin and conclude the payments of the rolls two days earlier than had been before accomplished.

REMOVAL OF HEADQUARTERS.

Following the policy decided on at the time of a former visit to the Isthmus, Chief Engineer Stevens has removed his headquarters from Panama to Culebra. The residence of the chief engineer and the administration office building have been occupied for several weeks. Some of the necessary quarters for the officers and headquarters employees are finished and occupied and additional quarters to amply provide for the remainder will be ready for occupancy in a very short while. Meantime some of the employees are brought from other near-by quarters on the line of the railroad. The chief engineer reports that he is delighted with the new location, and that he thinks the efficiency of the force has been increased fully 50 per cent.

Acting under the same general orders, issued in August last, the disbursing and auditing departments will be moved to Empire, a short distance from Culebra. The necessary buildings are under way, and it is hoped that the force will be moved within sixty days.

Work is in progress on the foundations for the governor's house on Ancon Hill, but the administration building for the governor, to be also situated on that hill, has not yet been commenced. Meantime, the offices of the governor are continued in the old canal administration building in the city of Panama, which affords them ample office space.

MARINE BARRACKS.

The question of a permanent location for marine barracks on the Isthmus was considered in conference, in accordance with your wishes, and it is thought that this matter can best be determined when more definite information is available as to the type of canal. It has been suggested, however, that the Corozal Hotel, situated 3 miles distant from Panama and on the main line of the Panama Railroad, might be well suited for this purpose. In addition to the main hotel building there are a number of smaller cottages, which would serve for officers' quarters. This hotel was built primarily for the use of the clerical force in the offices at Panama, but with the removal of a large portion of that force to Culebra and Empire, and with the completion of the Tivoli Hotel, on Ancon Hill, this class of employees will be well provided for elsewhere. The hotel is, nevertheless, utilized to its maximum capacity, but if the type of canal determined upon will permit of the occupancy of this site it is believed that it will be a very desirable change to all interests, inasmuch as the buildings are ready for immediate occupancy by the marines, and the Commission force now quartered therein can be provided for elsewhere. From a Commission point of view this would also enable the chief engineer to avail himself

sooner of the quarters now occupied by the marines at Obispo, and which can be utilized at once by him to great advantage.

CONCLUSIONS.

The results already obtained justify the policy decided upon during my first trip to the Isthmus and briefly outlined in my report to the President under date of August 12, 1905. In that report I called attention to the fact that the serious mistake which had been made up to that time was in attempting to "make the dirt fly" in advance of thorough preparation, and informed the President that instructions had been issued to close down the work of excavation, except in so far as was necessary to put the cuts in proper shape for the installation of the maximum number of steam shovels for economical service.

The work of canal construction divides itself properly into two parts, one of which must precede the other.

First. Thorough preparation. This includes the creation of an effective organization; the sanitation of the Isthmus; providing suitable quarters and food for employees; constructing proper terminal, yard, and railway-track facilities and intermediate yards for the handling of the vast quantities of supplies and materials; the installation of a system of tracks through the cuts; the working out of all engineering problems, and the formulation of a comprehensive plan for carrying forward the work in each department.

Second. The actual construction of a given type of canal.

The work of preparation is at once the more important and the more difficult of these two tasks. If it be not done thoroughly, intelligently, and well in every part the second task, that of actual construction, will be handicapped from the start. The launching of every great enterprise, the creating of an organization with which to carry on the work, is always the most difficult part of it. Once that has been accomplished successfully, the subsequent task of execution is comparatively easy. This preliminary stage is nearing completion on the Isthmus. Inspection during this last visit showed that the many intricate problems connected with the engineering branch of this task have been worked out, that in many other departments the preliminary work has been completed, and each week is witnessing its completion in others. Other necessary work will occupy the organization to advantage for a short time to come, but at the present rate of progress the time is fast approaching when decision as to type of canal will be essential to the continuation of work.

TYPE OF CANAL—DECISION URGENT.

Finally, the most important and pressing question before the Commission to-day is a decision in regard to the type of canal to be constructed. Chief Engineer Stevens pointed out to me the route of several diversion channels, the construction of which should be under way, but which he can not commence until the type of canal is decided upon. We have also in mind certain other intermediate yards, which we can not locate until that decision is reached. We are also holding back the improvements at La Boca (the Pacific terminus), both as to terminal yards and the extension of the steel pier, already referred to, not knowing whether or not the type decided on will cause us to abandon all these improvements.

The extent and character of additional machinery to be used, as well as the extent and character of additional equipment to be purchased, are all awaiting the determination of this most vital question, and inasmuch as all this machinery and equipment must be manufactured to order in the United States, and manufacturers in almost every branch are filling their books with orders months ahead, the delay in reaching a decision as to type may mean a very serious delay in getting the necessary plant, and thus ultimately mean serious delay in the construction of the canal.

Very respectfully,

T. P. SHONTS,
Chairman.

The SECRETARY OF WAR.

ISTHMIAN CANAL.

COMMITTEE ON INTEROCEANIC CANALS,
UNITED STATES SENATE,
Washington, D. C., Thursday, May 10, 1906.

The committee met at 10.30 o'clock a. m.

Present: Senators Millard (chairman), Kittredge, Morgan, and Taliaferro.

TESTIMONY OF WILLIAM NELSON CROMWELL, ESQ.—Continued.

Senator MORGAN. We rather wandered off yesterday, Mr. Cromwell, from the line of examination that I wanted to observe.

Mr. CROMWELL. Senator, before you continue, may I make a brief correction of your statements?

Senator MORGAN. Certainly.

Mr. CROMWELL. In your examination yesterday, Senator, at page 3061, you stated that it appears from the minute book that in 1893 there was a purchase of rolling stock by the railroad company from the liquidator of the old company. I have examined the minute book and find that the transaction to which you referred did not occur in 1893.

Senator MORGAN. Well, when did it occur?

Mr. CROMWELL. It occurred in 1892, sir.

Senator MORGAN. 1892? Well, I was mistaken in the date.

Mr. CROMWELL. The mistake is material, because I was not a director in 1892, and I was a director in 1893.

Senator MORGAN. Now, what was that transaction? Just explain it to the committee.

Mr. CROMWELL. I know nothing of the transaction, sir, except as contained in the minutes.

Senator MORGAN. Explain it from the minutes.

Mr. CROMWELL. Yes, sir. The minutes, Senator, of June 14, 1892, contain the following [reading]:

"Purchase of rolling stock from the liquidation of the canal company. Mr. Oppenheim stated that after an extended consideration of the topic, which had previously been the subject of a proposed convention between the two companies, he had agreed with the liquidator upon a basis of settlement which involved the payment of a lump sum of $360,000, in easy payments, for the purchase of the entire rolling-stock plant of the canal company now in use by the railroad company, for the settlement of the accumulated rentals due on that ground, and for the settlement of the sum of $40,000 now due to the railroad company for account of reconstruction of wharf No. 5. Whereupon it was resolved that a full report, which should

embody the reasons for these conclusions, be prepared by the secretary and submitted to this committee at a later meeting for its approval and adoption."

At the next meeting, on June 21, 1892, the following entry appears:

"Purchase of C. P. rolling stock; payment of amount due by liquidation to Panama Railroad Company for wharf No. 5.

"The settlement of the above matters was one of the objects of your delegates' visit to Paris, and as the result of several conferences held with the liquidator or his representatives we now present the following arrangement, to date from July 1, 1892, with the recommendation that it be ratified and put into execution by the board."

Then follows a long minute. I will read sufficient of it to show what it is. [Reading:]

"The Panama Railroad purchases from the liquidation all the C. P. rolling stock belonging to it on the Isthmus, consisting, on March 31, 1892, of 27 locomotives, 256 box cars, 234 coal cars, and 443 flat cars. The liquidation cancels the debits made for locomotive rental (at the rate of $2,022.50 per month) since July 1, 1890; in other words, gives us a credit on their Isthmus books of $48,540. The Panama Railroad agrees to pay to the liquidation the sum of $400,000, from which $40,000 is to be deducted as an indemnity due the railroad for the reconstruction of wharf No. 5. The balance, namely, $360,000, becomes due on July 1, 1892, and runs at 4 per cent interest until paid," etc.

From this minute it appears, Senator, that the transaction to which you referred did not occur in 1893, but did occur in 1892. At that time I had no acquaintance of any nature, sort, or description with the Panama Railroad Company or any of its directors or parties.

Senator MORGAN. You were not, then, a stockholder?

Mr. CROMWELL. I was neither a stockholder nor a director; so that the transaction has no relation to me.

Senator MORGAN. Well, that transaction left the railroad company the owner of all of its rolling stock—all the rolling stock and property upon the road?

Mr. CROMWELL. It left it the owner of the rolling stock described in the lines that I have just read to you.

Senator MORGAN. The liquidator of the old company, being at that time the owner of sixty-eight thousand and odd hundred dollars of the stock, was, in effect, selling that property to his company—to himself, as liquidator—was he not? That was the effect of it?

Mr. CROMWELL. No, sir; because he did not own a corresponding property interest in the canal company, which was the purchaser.

Senator MORGAN. I do not quite understand that explanation.

Mr. CROMWELL. Perhaps we are at cross-purposes regarding shares.

Senator MORGAN. Yes. It seems to me very clear that the liquidator of the old company, being at that time the owner of all the stock that had been purchased, the sixty-eight thousand and how many shares?

Mr. CROMWELL. Sixty-eight thousand five hundred and thirty-four, I think. That is near enough for present purposes.

Senator MORGAN. Yes. When that liquidator sold the rolling stock of the railroad company to the railroad company he was selling it to himself.

Mr. CROMWELL. Its practical effect would be that.

Senator MORGAN. That is the practical effect?

Mr. CROMWELL. I think it would be practically so, with a small difference of the minority interest.

Senator MORGAN. In other words, that was the beginning of the enterprise, as I understand it—I do not know whether you understand it that way—by which the Panama Canal Company was using this railroad company, this American institution, for the purpose of getting out of it all the money that was possible to be realized by the canal company. That was the way it was running.

Mr. CROMWELL. That is your inference, Senator. There is no warrant for it.

Senator MORGAN. That is my inference.

Mr. CROMWELL. The rolling stock, I understand, was worth the sum paid for it, and therefore the railroad company received the value.

Senator MORGAN. You say the rolling stock was worth the sum paid for it?

Mr. CROMWELL. Yes, sir; and therefore the railroad company received value, and there was no depletion.

Senator MORGAN. Was that before or after the date of the organization of the new company?

Mr. CROMWELL. That was before the date of the organization of the new company.

Senator MORGAN. How long before?

Mr. CROMWELL. The New Panama Canal Company was formed in October, 1894, the record states.

Senator TALIAFERRO. May I ask a question there in this connection, Senator?

Senator MORGAN. Certainly.

Senator TALIAFERRO. How did this rolling stock become the property of the canal company?

Mr. CROMWELL. I do not know, Senator; I had no previous acquaintance with the canal company at all.

Senator MORGAN. They had never bought anything except the stock.

Senator TALIAFERRO. I understand. I was addressing my inquiry to the witness's attempted explanation that the property was worth what the railroad company paid for it.

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. If that is so, and the railroad company had need for the rolling stock, why did they not buy it directly themselves?

Mr. CROMWELL. Buy it directly from where?

Senator TALIAFERRO. In the open market.

Mr. CROMWELL. Because this was ready at hand, and could be bought cheaper than you could buy rolling stock in the market.

Senator TALIAFERRO. What was the canal company doing with it? How did they happen to have rolling stock on hand that was needed by the railroad company?

Mr. CROMWELL. I do not know, Senator. I know they were in the midst of partial construction at that time, and they were in construction and had their own equipment, just as the canal company has

equipment of its own now, using it for their own tracks; I do not mean for commercial tracks alone—not for commerce, you see, but for the transportation of their material and their excavation work. And this equipment was owned by the canal company, in furtherance of its work, which was quite independent of the work of the railroad.

Senator TALIAFERRO. Then your presumption or understanding is that this rolling stock which was bought from the canal company by the railroad was rolling stock used for construction purposes?

Mr. CROMWELL. For construction of the canal.

Senator TALIAFERRO. Yes; I say for the construction of the canal?

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. What did the railroad company wish with the rolling stock to construct the canal?

Mr. CROMWELL. To use it for the purposes of its own business affairs. To use it in its own system.

Senator TALIAFERRO. So that the railroad company would thereafter be constructing the canal, or that part of it in which this rolling stock was used?

Mr. CROMWELL. No, sir; for its operations.

Senator TALIAFERRO. I understood you to say that this was not stock that entered into the commercial operations of the railroad?

Mr. CROMWELL. I did not say, Senator, that it did not enter into it. I say that the canal company had rolling stock independent of the rolling stock which the railroad company needed for its commercial operations.

Senator TALIAFERRO. Well, now, Mr. Cromwell, is it a fact that the character of rolling stock that the canal company would use in its construction operations would be suitable for the commercial purposes of the railway company?

Mr. CROMWELL. Not for general commercial purposes, but only for such purposes as would be incident to the construction of the canal, naturally. It would not be useful, all of it, in the current commercial use, but it would be useful as an adjunct to the canal work. So, in fact, I may say that I know nothing of the transactions. It occurred before my experience, and I only know of it as a matter of historical interest.

Senator TALIAFERRO. I took it up with you because you undertook to explain it. I am perfectly willing to dismiss the subject on your statement that you are not familiar with the facts.

Mr. CROMWELL. I thank you, Senator, for that statement, because that is the truth. I have no knowledge about it, except the general knowledge that the company acquired it because the canal company did not need it at that time. I may say that all these transactions have been ratified by the stockholders, years in and years out, again and again, so that they have passed into recorded history.

Senator MORGAN. Did you assist in the ratification of them?

Mr. CROMWELL. Always.

Senator MORGAN. How much cash money was paid for that stock to the canal company?

Mr. CROMWELL. For the rolling stock?

Senator MORGAN. Yes.

Mr. CROMWELL. I know nothing but what the minutes state.

Senator MORGAN. What do they show there? I want to get that.

Mr. CROMWELL. The minutes state that the consideration was

$400,000, less $40,000 that the canal compay owed the railroad company.

Senator MORGAN. For work on the wharf?

Mr. CROMWELL. Yes, sir; for repairs on the wharf. Have you finished on this topic? I do not wish to interrupt, but I would like to make another statement.

Senator MORGAN. On this topic, yes.

Mr. CROMWELL. I wish to assist the committee by alluding to the queries that were made yesterday regarding the qualification of directors' shares. I thought it might assist the committee if I brought to you a copy of the option agreement which has been here referred to several times, so that you would see its language.

Senator TALIAFERRO. The option under which you hold the Government stock?

Mr. CROMWELL. Yes, sir; aside from the description, which I have only very briefly given. Each director of the Panama Railroad Company has signed and delivered an option agreement in the following terms——

Senator TALIAFERRO. Do you wish it read, Senator Morgan?

Senator MORGAN. I think it had better go in the record.

Mr. CROMWELL. I will read it, then. [Reading:]

NEW YORK, *May 6, 1905.*

Hon. WM. H. TAFT,
Secretary of War of United States.

DEAR SIR: Confirming our agreement respecting the one share of the capital stock of the Panama Railroad Company owned by me, I beg to state:

That in consideration of $10 by you to me paid, the receipt whereof is hereby acknowledged, I hereby agree to sell, assign, and transfer to you at any time within three years from this date, upon your call and demand, and do give you the right and option to purchase and take the certain identical one share of the capital stock of the Panama Railroad Company, represented by certificate No. ——, standing in my name on the books of said company, for and in consideration of the sum of $90. Any dividends which may be declared upon this stock before this option may be exercised by you and payment made thereunder shall belong to me.

As a part consideration hereof, I do hereby irrevocably constitute and appoint you my proxy and agent for me and in my name, place, and stead, with full power of substitution and revocation to attend and act as my proxy and agent at any and all annual and special meetings of the stockholders of said company held within said period and at any adjournment of any such meeting, and to make, execute, and deliver any and all waivers, consents, or votes without any such meeting, upon or in respect of the said share of the said capital stock standing in my name, and with all and every right, power, and privilege which I would possess as the owner thereof if personally present or personally so acting, for any and all purposes soever, including any amendment of the charter of said company, any increase of the capital stock, or the creation of bonds, mortgages, or leases in respect of any present or future property of said company, or for any other object or purpose soever, without qualification; and I agree to execute and deliver to you irrevocable proxy or proxies to

this effect as from time to time by you demanded, and to do no act inconsistent with this agreement or which will in any respect be by you considered as an impairment of the value of said share or of your rights of purchase hereunder given.

As security for the performance by me of all the provisions of this agreement I herewith deliver to you said certificate for the said share of stock duly assigned and transferred, to be by you held under and subject to the terms of this agreement. If at any time within said period you shall exercise said option and make said payment, then the said stock and the certificate therefor shall become and be your absolute property free from this agreement, and I do thereupon sell, assign, and transfer the same to you accordingly; and if within said period you shall not exercise said option and make said payment, said certificate shall be returned to me upon my demand without obligation upon my part to repay the sum of $10 above mentioned. It is understood that this agreement relates to the specific one share in question, and that this agreement is specifically enforceable by you as to the same.

This agreement shall in all respects extend to and be obligatory upon your successor as Secretary of War of the United States, and the occupant, for the time being, of said office.

All demands, payments, and communications to me hereunder shall be addressed to me at ———, and as so addressed shall be legal and sufficient.

——— ———.

Witness: ——— ———.

Senator TALIAFERRO. What are the proceedings connected with the qualifying of a director when he is elected by the stockholders? How do you qualify?

Mr. CROMWELL. The qualification, sir, exists by the ownership of a share of stock.

Senator TALIAFERRO. Do you subscribe to no oath?

Mr. CROMWELL. No, sir.

Senator MORGAN. And you give no bond?

Mr. CROMWELL. No, sir; in no corporation.

Senator TALIAFERRO. There is no qualifying oath, as in the case of a director in a national bank?

Mr. CROMWELL. No, sir. The sole qualification of a director is that he shall be an owner of stock.

Senator TALIAFERRO. Is it a bona fide ownership?

Mr. CROMWELL. A bona fide ownership. In some States there is another feature of qualification, namely, that a certain number of directors must be residents of the States in which the corporation exists.

Senator TALIAFERRO. Does the New York law require bona fide ownership?

Mr. CROMWELL. It does.

Senator TALIAFERRO. Do you consider yourself a bona fide owner of that share of stock?

Mr. CROMWELL. I do, Senator. I and each of the other directors paid $100 of our own money for our shares.

Senator MORGAN. Who did you pay it to?

Mr. CROMWELL. To the Secretary of War. It is now in the Treasury of the United States. Then the Secretary of War purchased from us, under this option agreement, that share, identified by its identical number, and paid $10 on account, out of the Treasury. Therefore, each stockholder is out $90, and so remains out.

Senator MORGAN. What was the number of your share?

Mr. CROMWELL. I do not know the number. I think it is in this very paper that I just handed to you. I struck out the number, so that it would just show the general form. I think that is my number. I can get it from the book, if you wish it.

Senator MORGAN. Have you ever had it in your possession since you delivered it to the Government?

Mr. CROMWELL. Why, of course not.

Senator MORGAN. Of course not?

Mr. CROMWELL. Of course not.

Senator MORGAN. I do not see why it is "of course," if you own it.

Mr. CROMWELL. Under the process that I have explained. Then, each share covered by this agreement, identified by its number attached to that agreement, is in the hands of the Treasurer of the United States—in the hands of the Government of the United States. Under that agreement, as you see, the United States may transfer that stock instantly, upon mere tender to each of the directors of his $90.

Senator TALIAFERRO. Is not that agreement practically a bill of sale?

Mr. CROMWELL. It is not a bill of sale, sir.

Senator TALIAFERRO. Practically, I say?

Mr. CROMWELL. Not practically; because payment is not made under it. When payment is made, then it becomes, instantly, ipso facto, self-acting, a bill of sale.

Senator TALIAFERRO. Then, as a matter of fact, now, as a legal fact, does not the Government own the stock that stands in your name?

Mr. CROMWELL. It does not legally own it, Senator. In law, and as a matter of law, the ownership of that stock is in each director, subject to the right of the Government under that agreement to force specific performance of that agreement. In order to specifically perform it, the Government has only to make the payment which the agreement provides for, and then title vests again in the Government.

Senator MORGAN. I wish to ask another question right there.

Mr. CROMWELL. And the consideration for it is the small payment.

Senator MORGAN. You say, if I understand you, that, as a matter of law, this is a contract for the sale and delivery of that stock back——

Mr. CROMWELL. No; it is not a contract. It is an option.

Senator MORGAN. It is only an option?

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. Are you familiar with the national-banking laws?

Mr. CROMWELL. Well, somewhat.

Senator TALIAFERRO. Could a director qualify in a national bank as you have qualified as a member of this directory, assuming that he owned ten shares instead of one?

Mr. CROMWELL. I think he could, sir. The title unquestionably is in the owner, the purchaser, who paid his money. We have paid our money, and the Government has got our money this minute.

Senator MORGAN. It has got $90 out of a hundred. They have paid you back $10 of it.

Mr. CROMWELL. I say they have got our $90. The transaction is insignificant in money, and I am just analyzing it because of the principle involved, of course. But the Government has in its Treasury the $90.

Senator TALIAFERRO. Why not the $100?

Mr. CROMWELL. Because it paid me $10 for the option, as the consideration that validates it.

Senator TALIAFERRO. That really is a part payment on the stock?

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. And still you are a bona fide owner of the stock?

Mr. CROMWELL. It is a payment for the option; not a payment on the stock.

Senator TALIAFERRO. What did you pay for the stock?

Mr. CROMWELL. One hundred dollars.

Senator TALIAFERRO. What are you to get in return if the Government exercises its option?

Mr. CROMWELL. I will get $90. I have already received $10, and I would get $90 more.

Senator TALIAFERRO. You insist that that is not a payment on account of the stock?

Mr. CROMWELL. It is not, sir; and the option provides that it is not; for if the Government did not exercise the option, then the $10 is forfeited by the Government, and that makes clear that it is not a payment upon account.

May I make another suggestion?

Senator MORGAN. Yes; but not outside of this subject. I want to keep you on this subject.

Mr. CROMWELL. Yes; I want to keep on it. I wanted to answer the question of Senator Taliaferro regarding the power of removal under the law.

Senator TALIAFERRO. Yes.

Mr. CROMWELL. My statement is correct that the stockholders have no power of removal as such. They can not call a meeting, for instance, of stockholders and remove directors. I also mentioned yesterday that action could be brought in our Supreme Court. While actions can not be brought by stockholders to remove, an action can be brought by the attorney-general to remove.

Senator TALIAFERRO. By the attorney-general in behalf of the stockholders?

Mr. CROMWELL. Upon the petition of the stockholders or creditors or any party interested. And that proceeding is a proceeding in the nature of a quo warranto, and it comes on for trial, and if upon full trial the cause of action was sustained then there would be removal.

Senator TALIAFERRO. So that you think now, Mr. Cromwell, that there is a process of law by which the holders of 99 per cent of the stock of a company could remove an objectionable board of di-

rectors—a board of directors not discharing its duties or guilty of malfeasance in office, for example?

Mr. CROMWELL. I think not, Senator, in a technical sense. I am trying to meet the essence of your question rather than its technicality. Technically, no. The stockholder has no cause of action himself. He has no power of removal in himself. The stockholders have no power of removal of themselves. But the attorney-general, if they can convince him that there is a good cause of action, may institute a proceeding in the name of the people of the State.

Senator MORGAN. You mean they can go into court and get the director removed, but that they can not remove him without going into court?

Mr. CROMWELL. I do not mean quite that. They can not go into court at all. The attorney-general is the only one who can go into court. He goes into court in the name of the people.

Senator MORGAN. He represents the Government?

Mr. CROMWELL. He goes in the name of the people of the State of New York.

Senator MORGAN. You are so remarkably refined and technical in your language that it is impossible for me to keep up with you, and yet I am a pretty old lawyer and have been at it a good while.

The attorney-general represents the people?

Mr. CROMWELL. Of the State of New York.

Senator MORGAN. And the Attorney-General of the United States represents whom?

Mr. CROMWELL. The people of the United States.

Senator MORGAN. Or the Government, which?

Mr. CROMWELL. I will leave that for you to define, Senator, as you are such a good lawyer.

Senator MORGAN. I never heard of his being elected by the people. I do not know whether he represents them or not.

Mr. CROMWELL. Nor I either.

So that, under this option agreement that I mentioned this morning, the power resides in the Government to disqualify each director and then vacate the office whenever any director ceases to be agreeable.

Senator MORGAN. To get down to your phraseology, you say, technically, the board of stockholders could not remove a director?

Mr. CROMWELL. No, sir; the body of stockholders could not remove a director.

Senator MORGAN. They could not remove him?

Mr. CROMWELL. No, sir.

Senator MORGAN. In order to get him removed they would have to go into court?

Mr. CROMWELL. In order to effect removal in that fashion it would be necessary to satisfy the attorney-general of the State of New York that there was a cause of action.

Senator MORGAN. I did not ask you anything about the State of New York. I asked whether it was not necessary for them to go into court and get the judgment of the court, in order to remove the director.

Mr. CROMWELL. The attorney-general would have to go into court.

Senator MORGAN. Whoever had it to do, that is the mere formula; it is the people who are getting into court, after all, whoever is inter-

ested in effecting the removal of the board of directors or of a director. The people who are interested would have to, in some form, or through some agency, go into court to do it. There is nobody but the court that can do it, if I understand you?

Mr. CROMWELL. That is correct, except that in this particular instance the Secretary of War can do it by transferring the stock out of the names of each party.

Senator MORGAN. Then a man who has made a plan to embezzle a million dollars from this railroad company can have his plans all matured, and the stockholders may be in session, and they can not remove him?

Mr. CROMWELL. The stockholders can remove him in another way; in this instance, by transferring the stock.

Senator MORGAN. But they can not remove him at once?

Mr. CROMWELL. They can remove him instantly by transferring the stock out of his name.

Senator MORGAN. What right have they to transfer his stock?

Mr. CROMWELL. The United States has the right to transfer the stock of these directors.

Senator MORGAN. In an ordinary corporation, you say the stockholders have the right to transfer the stock——

Mr. CROMWELL. I am speaking of this instance, particularly.

Senator MORGAN. Well, now, let us get at the principle of law.

Mr. CROMWELL. You want to discuss it as a principle of law?

Senator MORGAN. Yes; I want a little discusison of that.

Mr. CROMWELL. I shall be very glad to discuss it in that way, Senator.

Senator MORGAN. A board of stockholders is in session and they are informed that a director has a million dollars in his satchel and his satchel is packed to take the first steamer to Europe and they can not move him; is that what you say?

Mr. CROMWELL. I say so.

Senator MORGAN. I do not think I will amplify the case any further. I think that is about as good an illustration of the absurdity——

Mr. CROMWELL. The board of directors could remove the man as an officer and the attorney-general of the State could begin proceedings to remove the director in the way I have described.

Senator MORGAN. I wish more particularly now to know with what individual this contract was made.

Mr. CROMWELL. How is that, Senator?

Senator MORGAN. With what individual, with what gentleman, was this contract made?

Mr. CROMWELL. With each and every one of the directors.

Senator MORGAN. No; the party of the other part. Who was the party of the other part making the contract with each and all of these directors?

Mr. CROMWELL. The Secretary of War.

Senator MORGAN. You mean Mr. Taft?

Mr. CROMWELL. As Secretary of War.

Senator MORGAN. As Secretary of War?

Mr. CROMWELL. The document states that it runs to his successors in office.

Senator MORGAN. Do you know of any authority that Mr. Taft has as Secretary of War to enter into such a contract—any act of Congress that authorizes him to do it?

Mr. CROMWELL. I think the President has power to do all things which are necessary for the construction of the canal, and this is one of them. He has delegated certain of those powers to the Secretary of War, by order of May 9, 1904.

Senator MORGAN. You refer now to the general powers of the President in the construction of the canal?

Mr. CROMWELL. And also to his general power to preserve and protect the property of the Government of the United States.

Senator MORGAN. But he was not preserving it; he was selling it.

Mr. CROMWELL. This is the only way he can preserve it.

Senator MORGAN. I thought they might have kept it in the safe, and gone on with their business, without having you in the board of directors.

Mr. CROMWELL. No, sir; that is the only way, by legalizing——

Senator MORGAN. If the only way to preserve it was to get you and your clerk Farnham, and the minister from Panama into the directorship, of course that was all right; but I think there were various other ways of doing it besides that.

Mr. CROMWELL. We would be glad to have your advice, sir. No doubt it would be very valuable.

Senator MORGAN. I will give it at the proper time and place.

Is there anything in this charter or the laws of New York that authorizes anybody to make such a transaction as is incorporated in this paper?

Mr. CROMWELL. The law of the State permits it.

Senator MORGAN. What law of the State?

Mr. CROMWELL. The general law.

Senator MORGAN. State it, if you please.

Mr. CROMWELL. It is a general principle of law.

Senator MORGAN. Oh, a general principle of law? I want to know about statutes.

Mr. CROMWELL. There is no statute. There is no occasion to have one.

Senator MORGAN. You fall back on the common law, then?

Mr. CROMWELL. I fall back on the law of contract, which is good enough for me.

Senator MORGAN. That is a part of the common law, is it not?

Mr. CROMWELL. It is.

Senator MORGAN. You say there is no statute about it?

Mr. CROMWELL. There is no statute; none needed.

Senator MORGAN. Under the law of New York, the statute law of New York, this transaction could not have been made?

Mr. CROMWELL. I do not say so. I say there is no specific statute. That does not affect its legality.

Senator MORGAN. Mr. Taft was representing the Government of the United States in that situation?

Mr. CROMWELL. He was.

Senator MORGAN. And as the owner of all the stock in the railroad?

Mr. CROMWELL. All except the qualification shares, in the way I have described.

Senator MORGAN. And then, under this sale we have called your attention to this morning, that included also all the rolling stock of the company that the old company used to own?

Mr. CROMWELL. The capital stock of the corporation carried with it whatever property it owned.

Senator MORGAN. They did not rely upon the capital stock. It seemed in the case of the sale by the old liquidator they made an additional arrangement under which the property was transferred in specie from the Old Canal Company to the railroad company. Now, the Government of the United States, through these various manipulations, had become the owner in fact of all the property and all the stock in that company at the time this transaction took place?

Mr. CROMWELL. Substantially; with the exception of the shares which they maintain as qualification shares for the board.

Senator MORGAN. Were they retained, or had they been delivered?

Mr. CROMWELL. I do not know the history of that, Senator.

Senator MORGAN. I have got the history here of record, that you delivered them and took their receipt for them.

Mr. CROMWELL. Very well; I am glad to have you prove what I have said.

Senator MORGAN. The fact is, then, that at the time that this transaction took place the Government of the United States owned everything that belonged to the railroad company. Is not that the fact?

Mr. CROMWELL. With the qualification that I am always making of the qualification shares of the directors.

Senator MORGAN. You are always making qualifications that I do not understand. I want to know exactly if there is any statement now to the contrary of what I have inquired, that the Government of the United States actually was the owner and in possession of all the property and all the capital stock and everything else that belonged to that railroad at the time that this paper was signed.

Mr. CROMWELL. I know it was contemplated that the board of directors must and should retain the qualifications of the directors.

Senator MORGAN. I have no doubt that it was contemplated, and I want to ask you some questions, as you have stated it was contemplated, about that contemplation.

Mr. CROMWELL. Very well.

Senator MORGAN. What was the understanding, now, at the time you surrendered that stock into the hands of the Government of the United States?

Mr. CROMWELL. As to what?

Senator MORGAN. What was in contemplation?

Mr. CROMWELL. As to what?

Senator MORGAN. As to the future relations of these men, yourself included, to this railroad company, as directors, or in any other respect, what reservation was made of any right, equity, promise, understanding, hope, or expectation in behalf of anybody in respect of this transaction? Was it a complete transaction, evidenced by what took place in the delivery of that stock, or was there a string tied to it? And if there was, I want you to unravel it.

Mr. CROMWELL. There was no string or no tie that I know of.

Senator TALIAFERRO. You certainly would know, Mr. Cromwell.

Mr. CROMWELL. No; I know of none.

Senator MORGAN. You said there was something in contemplation.

Mr. CROMWELL. It was in contemplation that the directors of the company should be legally qualified, whoever the directors would be.

Senator MORGAN. Was it that?

Mr. CROMWELL. Certainly that.

Senator MORGAN. Legally qualified how?

Mr. CROMWELL. By ownership of their shares just as we had always been so careful to preserve——

Senator MORGAN. Was there any understanding, Mr. Cromwell, at that time, as to who those directors were to be?

Mr. CROMWELL. Not the remotest; no, sir.

Senator MORGAN. You swear to that?

Mr. CROMWELL. I do.

Senator MORGAN. There was no understanding as to who they were to be?

Mr. CROMWELL. When these options were made?

Senator MORGAN. Yes; and when you delivered the stock.

Mr. CROMWELL. Not when we delivered the stock. When the options were made, of course the directors knew who were to be directors.

Senator MORGAN. What was the difference in time between the date of the delivery of that stock and the making of this paper that you call an option?

Mr. CROMWELL. Which stock do you mean? The block of stock of the canal——

Senator MORGAN. I want you to answer the question.

Mr. CROMWELL. I am asking which shares you refer to.

Senator MORGAN. I will ask the stenographer to repeat the question.

(The stenographer read the question referred to, as follows:)

"What was the difference in time between the date of the delivery of that stock and the making of this paper that you call an option?"

Mr. CROMWELL. The delivery of the stock of the canal company was made May 7.

Senator MORGAN. I am speaking about these shares that you bought up.

Mr. CROMWELL. There were other shares acquired later—in January, 1905. Those were the shares which were acquired by me at the request of the President.

Senator MORGAN. I am going to examine Mr. Taft, I want to let you know, so I want you to be particular.

Mr. CROMWELL. I am always particular, Senator.

Senator MORGAN. Yes; that is right. State the interval of time between your delivery of that stock to the Government and your making this agreement, either formally in writing or by agreement with each other.

Mr. CROMWELL. I shall have to get my accounts, Senator, of the purchases that I made and the deliveries I made to the Government. I can do that, and answer your question very readily.

Senator MORGAN. I have got your account of it here.

Mr. CROMWELL. The accounts are on file with the War Department, all of them.

Senator MORGAN. Here is the account. Take it and look over it, and read that letter in front of it, if you want to [handing papers to Mr. Cromwell].

Mr. CROMWELL. There is nothing here about the shares, is there, Senator? You probably handed me the wrong papers [returning papers to Senator Morgan].

Senator TALIAFERRO. Did I understand you to say, Mr. Cromwell, that you had been commissioned or requested by the President to buy up certain of this stock?

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. Was the request made direct by the President to you, or through the Secretary of War?

Mr. CROMWELL. Through the Secretary of War, who wrote me that he was acting by direction of the President.

Senator TALIAFERRO. Did you buy the stock under that request?

Mr. CROMWELL. I did, sir.

Senator TALIAFERRO. Did you buy any of this stock without such authority from the Secretary of War or the President?

Mr. CROMWELL. Some of the stock I bought upon my independent judgment, and submitted my report to the Secretary of War, who, upon full consideration, adopted the purchase.

Senator TALIAFERRO. So that there was some of this outstanding stock that you purchased for your own account, or without any authority from the Government to purchase it?

Mr. CROMWELL. That is true. I think there were 240 or 250 shares that I had the opportunity to buy, under great stress, and I considered it of such vital consequence to the Government that the shares be acquired that I did not hesitate, no means of communication being open, to close the bargain. And I am very proud of the transaction, for it enabled me to buy and thus complete the entire ownership of the stock.

Senator TALIAFERRO. What do you mean by "under stress?"

Mr. CROMWELL. Under the stress of negotiation. I know that if I had not purchased them at that particular moment I probably could not have gotten them at all, and you would not be owning the stock. It was a happy stroke.

Senator TALIAFERRO. Was there any limitation on the price that you were to pay for this stock under the authority of the Secretary of War?

Mr. CROMWELL. Yes, sir. I think I have the letter of the Secretary of War here.

Senator TALIAFERRO. Your recollection about the matter, Mr. Cromwell, will be sufficient.

Mr. CROMWELL. I shall produce the letter. I have it here. [After searching for the letter referred to.] It was in January, 1905, that the Secretary of War addressed me a letter, in effect stating that by direction of the President he requested me to use my large experience on the subject and to acquire, if possible, for the United States all of the outstanding minority stock.

Senator MORGAN. I want to hear all that, but before you go into it I want to ask you something about it. What is the date of this option transaction?

Mr. CROMWELL. May 6.

Senator MORGAN. What year?

Mr. CROMWELL. 1905. There were two or three forms similar signed preceding it—at the time of the election.

Senator MORGAN. Have any dividends been made by the railroad company since that time?

Mr. CROMWELL. One dividend; yes, sir.

Senator MORGAN. A dividend made to you?

Mr. CROMWELL. A dividend was made upon that stock, payable to all the shareholders.

Senator MORGAN. How much was it?

Mr. CROMWELL. It was 5 per cent, payable in January, 1905. That is the only dividend.

Senator MORGAN. Have you received your dividend?

Mr. CROMWELL. I suppose so; yes.

Senator MORGAN. You suppose so? Do you not know whether you have or not?

Mr. CROMWELL. No doubt; yes. I will say yes.

Senator MORGAN. How much did you get?

Mr. CROMWELL. It would be $5. Five per cent on one share would be $5.

Senator MORGAN. Not if you only had $90 of interest in it.

Mr. CROMWELL. That would be the dividend. The dividend would run on the one share, Senator.

Senator MORGAN. The dividend would run? How much money would you get?

Mr. CROMWELL. I would get $5.

Senator MORGAN. You would get $5 on one share of stock?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. And yet the Government had paid you $10 for the purchase of that stock?

Mr. CROMWELL. Yes; it has paid nothing since.

Senator MORGAN. That was your understanding, was it, that you were to receive the dividends?

Mr. CROMWELL. The paper states so.

Senator MORGAN. Yes; I thought it did. That is the reason I noticed the particularity of it.

Mr. CROMWELL. It is stated there. That is another element that makes the document legal.

Senator MORGAN. You have given your receipt for that share of stock to somebody?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. Who did you receipt to for it?

Mr. CROMWELL. The stock?

Senator MORGAN. Yes; the dividends on it.

Mr. CROMWELL. To the railroad company. The railroad company pays the dividends, of course.

Senator MORGAN. Have you given a receipt?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. Where is it?

Mr. CROMWELL. I have no memory about it, but I have no doubt that I gave the receipt.

Senator MORGAN. Where is it, if you gave one?

Mr. CROMWELL. In the Panama Railroad office it would be. The indorsement of the check of itself would be a receipt. It was paid by check, you know. The Government received its dividends at the same time.

Senator MORGAN. You received a dividend of $5 on that share of stock; the Government is entitled to one-tenth of that dividend, is it not?

Mr. CROMWELL. No, Senator; because the shares were sold under the following circumstances: I am embarrassed by not having my papers here, and am speaking now from memory. The offer of purchase of these shares was for the payment of $105 per share, and that was the amount I was authorized to pay for them. A part of the terms of purchase was that any dividend declared in the meantime would go to the stockholder, so that the selling stockholders received the $5 in connection with the purchase. Consequently the Government only paid $100 per share for the stock, while otherwise it would have paid $105. The Government was saved the payment of the $5 per share because the dividend was made at that time.

Senator MORGAN. They were not entitled to receive all of the $5, if they only owned 10 per cent of the hundred on which the dividend was declared.

Mr. CROMWELL. They did not own my one share at that time, when the dividend was declared.

Senator MORGAN. Who did own it?

Mr. CROMWELL. I owned it myself.

Senator MORGAN. If you owned the share of stock, you were entitled, then, to the $5?

Mr. CROMWELL. I was.

Senator MORGAN. And the Government had no right to make a reduction because they had paid you $10 toward the purchase of it.

Mr. CROMWELL. No, sir. The option agreement was made subsequently. The $5 dividend was made in January, as a part of the purchase of the stock.

Senator MORGAN. And so now you are a shareholder to the amount of a share in that company, and the Government has an option to buy it back. That is the way it stands?

Mr. CROMWELL. The dividend was paid in January, 1905, and went to what we will now describe as all the outstanding stockholders at that time. The Government at that time did not own my one share. That is the short of it. And the dividend declared came to me and to all the minority stockholders.

Senator TALIAFERRO. And when this share was turned over to you, it was given to you to qualify you as a director in that company?

Mr. CROMWELL. Afterwards; yes, sir.

Senator TALIAFERRO. I mean when it was surrendered to you in the beginning, in January, or when your stock was turned over to the Government?

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. This majority stock was turned over to the Government, and a share was put in your name?

Mr. CROMWELL. No, sir. Oh, no, Senator.

Senator TALIAFERRO. Explain that.

Mr. CURTIS. He was already a shareholder.

Mr. CROMWELL. I was personally the owner of 29 shares—was it not? I unfortunately have not my papers here.

Senator TALIAFERRO. Fourteen shares you said you bought in 1893.

Mr. CROMWELL. No; I was the owner of 31—there is no use confusing it. I have it all here. [Consulting papers.]

Senator TALIAFERRO. I do not care anything about knowing how much you owned, Mr. Cromwell. I simply wanted to get at the facts in this case, as to how you came to be an owner of just one share of stock when this dividend was declared and how it was that that option to take over that stock by the Government was not executed until May. That is all I wanted to get at.

Mr. CROMWELL. When the dividend was declared I was the owner of more than one share of stock. I had held, as I have described, a few shares of stock to qualify myself as director and to qualify any other of our associates whom we needed for that purpose.

Senator TALIAFERRO. Then do you not wish to correct your testimony where you said that you got $5 in dividends?

Mr. CROMWELL. I got $5 in dividends, but before I had sold my stock, or in connection with the sale of the stock.

Senator MORGAN. One moment. You said, to qualify yourself and to qualify any others of your associates. I will ask the stenographer to read that answer.

(The stenographer read as follows:)

"I had held, as I have described, a few shares of stock to qualify myself as director and to qualify any other of our associates whom we needed for that purpose."

Senator MORGAN. Who were "our associates?"

Mr. CROMWELL. From time to time during these years——

Senator MORGAN. What individuals were they?

Mr. CROMWELL. I remember, for instance, that General Comstock, when he became a director—it was some years ago——

Senator MORGAN. I am not speaking of that; I am speaking of these associates that you wanted to qualify by holding a few shares of your stock back from the Government.

Mr. CROMWELL. I did not say that I had held them back from the Government.

Senator MORGAN. Well, whether you said it or not, that is what you meant.

Mr. CROMWELL. It was not what I meant, for I delivered mine to the Government.

Senator MORGAN. There were a few shares that you did not deliver?

Mr. CROMWELL. There were no shares save one that I did not deliver, finally.

(By request of Senator Morgan, the stenographer again read the preceding answer of Mr. Cromwell, above referred to, as follows:)

"I had held, as I have described, a few shares of stock, to qualify myself as director, and to qualify any other of our associates whom we needed for that purpose."

Mr. CROMWELL. I had, during these years——

Senator MORGAN. Up to what time did you hold those few shares of stock?

Mr. CROMWELL. I want to give you the exact date, because that makes the examination more intelligent, and it is the lack of that date that is confusing us.

Senator MORGAN. Those few shares of stock that you held back for the purpose of qualifying your associates as directors of this company were delivered to the Government of the United States. Now, when were they delivered?

Mr. CROMWELL. Let us clear up the subject——

Senator MORGAN. No. Answer that question.

(By request, the stenographer read the pending question.)

Mr. CROMWELL. I did not hold back any shares.

Senator MORGAN. You just stated that you did.

Mr. CROMWELL. I did not say that I had held them back.

Senator MORGAN. I am not playing on words.

Mr. CROMWELL. I am. I am criticising your words.

Senator MORGAN. Yes; I know; you are very apt to do that.

Mr. CROMWELL. I want to make it perfectly clear.

Senator MORGAN. You can get at the truth without criticising my language.

Mr. CROMWELL. It is pretty hard to get any truth out of you without being able to criticise your language.

Senator MORGAN. I am not on the stand.

Mr. CROMWELL. You had better be.

Senator MORGAN. You are on this stand, swearing in the presence of the Almighty to tell the truth, and it is my duty to examine you, and I am going to do it.

Mr. CROMWELL. I shall answer your question in this way——

Senator MORGAN. Now, answer the question.

Mr. CROMWELL. As I have several times said, I had purchased a few shares of stock, originally fourteen, and a list of which appears here in the evidence, for the purpose of qualifying myself as director and for the purpose of qualifying any other of the associates of ours who, from time to time, it was desired to elect as directors, and who would not be able otherwise to acquire the stock.

Senator MORGAN. When did you purchase those fourteen shares?

Mr. CROMWELL. March 31, 1903. Those shares, with the few changes which the record reports, here on file, I held down to the time of the transfer to the United States.

Senator MORGAN. Did you then deliver them?

Senator TALIAFERRO. I think you made a mistake there. You testified yesterday, as I understand, that you bought those fourteen shares in 1893, and not in 1903.

Mr. CROMWELL. In 1893, of course.

Senator TALIAFERRO. You said just now "1903."

Senator MORGAN. He said "1893" just now, I thought.

Senator TALIAFERRO. No, Senator; he said "1903" now.

Mr. CROMWELL. I meant 1893, of course.

Senator MORGAN. Mr. Cromwell, you kept those fourteen shares of stock until you delivered them to the Government of the United States?

Mr. CROMWELL. They had become more than fourteen shares, Senator——

Senator MORGAN. I am asking about that particular fourteen shares.

Mr. CROMWELL. No, sir; because the record shows that of those fourteen shares I sold eleven.

Senator MORGAN. Then you kept three of them until you delivered them to the Government of the United States?

Mr. CROMWELL. Then I kept the three until there came an opportunity to buy a few shares more—I have forgotten the number.

Senator MORGAN. Then you delivered them all to the United States Government?

Mr. CROMWELL. I delivered all, finally, to the United States, except one.

Senator MORGAN. Well, you delivered that?

Mr. CROMWELL. I did not deliver that.

Senator MORGAN. The record shows that you did.

Mr. CROMWELL. Not at the time of the sale.

Senator MORGAN. When did you deliver it?

Mr. CROMWELL. Subsequently.

Senator MORGAN. At what date?

Mr. CROMWELL. The record will show; I do not recall.

Senator MORGAN. How long subsequently?

Mr. CROMWELL. Immediately following; not long after.

Senator MORGAN. Five minutes?

Mr. CROMWELL. No; I do not recall, Senator; but I will get the record.

Senator MORGAN. Let us have the facts about it. You recollect that.

Mr. CROMWELL. I have no recollection of such incidents; of course not.

Senator MORGAN. Can you not improve your recollection by a little reflection?

Mr. CROMWELL. I think so. Give me the papers, and I can easily do so. My account with the Government will show it in detail. Everything is very accurately set forth, and I will get it.

Senator MORGAN. At the time that you made a final settlement with the Government, or at least at the time that they accepted your stock that you had been purchasing and gathering together, did you reserve any share of it?

Mr. CROMWELL. I did reserve one share.

Senator MORGAN. You kept it in your hands?

Mr. CROMWELL. I did, physically.

Senator MORGAN. Physically?

Mr. CROMWELL. Physically.

Senator MORGAN. You never delivered it to the Government?

Mr. CROMWELL. And did not then deliver it to the Government.

Senator MORGAN. When did you deliver it?

Mr. CROMWELL. Subsequently.

Senator MORGAN. How long subsequently?

Mr. CROMWELL. I can not state from memory, but I could get the fact.

Senator MORGAN. Was it not some time?

Mr. CROMWELL. It was not some time.

Senator MORGAN. I do not mean the hair's breadth of a half second.

Mr. CROMWELL. Nor I, either.

Senator MORGAN. I am talking about the transaction.

Mr. CROMWELL. The record is indubitable. My memory can easily be assisted, because I made a public invitation for the purchase of these shares, and it was advertised the country over. The Bankers' Trust Company, of New York——

Senator MORGAN. Do not let us go into that. There is enough laudation of your glory——

Mr. CROMWELL. It is necessary, to answer this.

Senator MORGAN. Do not let us have that.

Mr. CROMWELL. I turned in and deposited all of my shares except one, and that is the reason, I say, that I did reserve one; and the evidence of it is indubitable.

Senator TALIAFERRO. How many shares of the stock did you hold when this last dividend was declared?

Mr. CROMWELL. One share.

Senator TALIAFERRO. That is all?

Mr. CROMWELL. Pardon me. I will not say one share; I can not say. I may have held them all. It may have been declared upon them all. I think it was. We got a dividend first.

Senator MORGAN. Let us try another director. Take your clerk, Farnham. How did he get a share out of the Treasury of the United States?

Mr. CROMWELL. His share was purchased direct from the Secretary of War. He had no previous holdings.

Senator MORGAN. Yours seems to have been an exceptional case.

Mr. CROMWELL. Mine was the case I have mentioned.

Senator MORGAN. It was exceptional. It was not like the others. There was no other case like it amongst these directors?

Mr. CROMWELL. They all had paid $100 for their shares some time before, when they were originally elected; but I can not state from memory. I will get the details for you, Senator, with great pleasure. It is all a matter of record and account.

Senator TALIAFERRO. You had, in all, 29 shares of this stock of yours, Mr. Cromwell, or about that—approximately 29?

Mr. CROMWELL. Twenty-nine or 31—I have forgotten.

Senator TALIAFERRO. What did you pay for that stock?

Mr. CROMWELL. I do not recollect. I bought in small lots, at par or a little under, whatever it would be at the time—anything to get them. The object of getting them was to be able to qualify.

Senator TALIAFERRO. Did you read Mr. Drake's testimony before this committee?

Mr. CROMWELL. I skimmed through it. I have not read it closely.

Senator TALIAFERRO. Do you remember what he had to say about the market value of that stock?

Mr. CROMWELL. Yes, sir; I think he said it was 65 or 70 or 80, or something like that.

Senator TALIAFERRO. Do you coincide with the views that he expressed to this committee on that subject?

Mr. CROMWELL. I have no idea, Senator. I was not following such transactions. I would not be likely to know. The stock of the Panama Railroad Company had no market, you know. There were just a few shares held here and there, and it was very difficult to get a share at all.

Senator TALIAFERRO. Is his testimony borne out by your transactions in this stock?

Mr. CROMWELL. I have no memory, Senator, at all. I can easily hunt it up, if you think it is important. It is many years ago. But the purchase of these shares, as you can well understand, was simply for the purpose of qualification, and I would pay anything that anybody would want for them, because it was very difficult to get the shares, and very important to have them to qualify.

Senator TALIAFERRO. Would you say, now, according to your best

recollection on the subject, that you paid over 60 cents for the stock that you bought?

Mr. CROMWELL. I should think so. Yes; I think I paid more than that. But I did not attach any importance to it. I know we got no dividends for eight years, which would improve the price of the stock far more than par.

Senator TALIAFERRO. I am not questioning your right in the matter at all, Mr. Cromwell. Whatever you may have paid for this stock, you were entitled to what you could get for it in selling it. I simply want to get at the facts.

Mr. CROMWELL. Certainly, Senator. I have no objection to getting at the facts.

Senator TALIAFERRO. I would like to know how much of this stock you held when the last dividend—was that in January?

Mr. CROMWELL. January—yes, sir.

Senator TALIAFERRO (continuing). When the last dividend declared by the company was paid to you?

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. I would like to know how much of the stock you held then. You can have an opportunity to put it in the record at your leisure.

Mr. CROMWELL. I will get it for you right away.

Senator TALIAFERRO. You are not prepared to state, then, from your knowledge of the affairs of the Panama Railroad Company, having been its attorney for many years, that Mr. Drake's testimony as to the market value of that stock, or the selling value of that stock, was correct as given before this committee?

Mr. CROMWELL. No, Senator; because I have no experience or acquaintance with the topic of the share prices. The transactions in Panama Railroad shares were but a few a year, and for anybody to sell his stock would be a matter of wonderment. There were no transactions in it.

Senator TALIAFERRO. Do you know Mr. Drake very well?

Mr. CROMWELL. Yes, sir; oh, very well.

Senator TALIAFERRO. You observed, I have no doubt, that he testestified that he had been a stockbroker in New York a great many years before he became connected with the Panama Railroad Company?

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. And that he regarded himself as an expert on the valuation of stocks generally, and this stock in particular, in the New York market?

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. I presume you noticed that in his testimony?

Mr. CROMWELL. I think so.

Senator TALIAFERRO. You would say that his testimony could be relied upon?

Mr. CROMWELL. I should think so, Senator. He would know far better than I. The transactions, I know, in stocks of any company in which there are but a few shares outstanding are dependent entirely upon the accident of the moment. There is no traffic in them, nobody is wanting them, and the market value has no relation to the real value.

Senator TALIAFERRO. Congress some time ago had up the subject of authorizing the condemnation of that stock?

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. Was there any objection, as far as you know or could learn, on the part of either House of Congress as to that particular plan recommended by the Secretary of War—a plan of condemnation to acquire this stock?

Mr. CROMWELL. Did he recommend it? I was not aware of that.

Senator TALIAFERRO. I think in his testimony before this committee he probably recommended it.

Mr. CROMWELL. I do not recall whether he did or not.

Senator TALIAFERRO. The records will show that.

Mr. CROMWELL. I know of no opposition—I know of no views to the contrary, and I think each House indorsed the idea.

Senator TALIAFERRO. Each House indorsed the idea?

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. So that it was a reasonable presumption, when the Houses disagreed on other questions involved in the legislation, that they would finally come to the point of passing a bill authorizing the acquisition of this stock by condemnation proceedings?

Mr. CROMWELL. Well, Senator, they did not, did they?

Senator TALIAFERRO. They did not disagree on that point.

Mr. CROMWELL. No, sir.

Senator TALIAFERRO. As I understand, from your testimony?

Mr. CROMWELL. That is right.

Senator TALIAFERRO. Both Houses agreed on that particular point, but disagreed on other points, embraced in the same legislation. Is that your understanding?

Mr. CROMWELL. Substantially, I think, Senator; that is right.

Senator TALIAFERRO. Well, where both Houses had agreed on a proceeding of that character, is it not reasonable to suppose that they would have sooner or later passed legislation to carry out that plan?

Mr. CROMWELL. It was strongly hoped, I know, that they would do so; but as Congress had adjourned, as you know, and the difficulties of the situation were very great, the perils, indeed, of continuing the management of the corporation with a minority of stock outstanding presented a very grave question, during the interval of Congress, too. There is no disaccord in the question of the propriety of the legislation you refer to. It would have been a grave question of law whether the legislation could have been carried out.

Senator TALIAFERRO. Mr. Cromwell, Mr. Drake testified that the highest price paid for this stock of the minority holdings on the New York market was 60 to 75 cents on the dollar.

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. I notice that in your purchase of your stock you paid 280 for it.

Mr. CROMWELL. I paid 280, Senator, for one lot of stock.

Senator TALIAFERRO. For 234 shares—$23,400 face value of the stock?

Mr. CROMWELL. That is right.

Senator MORGAN. I would like to ask just there: Did you do that at the request of the Secretary of War?

Mr. CROMWELL. That, sir, is the transaction I referred to a while ago——

Senator MORGAN. No; answer the question just in that way.

Mr. CROMWELL. No, sir.

Senator MORGAN. Did you do it at the request of the Secretary of War?

Mr. CROMWELL. No, sir; that is the transaction I described a while ago as being made upon my own authority.

Senator MORGAN. That is all that I have asked you, and you have answered the question. You need not go ahead further than that.

Mr. CROMWELL. I prefer to go ahead and state the facts.

Senator MORGAN. We are not consulting all of your preferences; we are consulting a good many of them, but you can not have your way in all of them.

Mr. CROMWELL. I thought you wanted the facts.

Senator TALIAFERRO. So that the Secretary of War authorized you to acquire this minority stock at a cost not to exceed 105?

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. And after buying certain amounts of it at that price, without any authority from the Secretary of War, for one lot of this stock, namely, 234 shares, you paid 280?

Mr. CROMWELL. I did; out of my own pocket, too.

Senator MORGAN. Well, I am glad of that.

Senator TALIAFERRO. Men do not usually go in other people's pockets to pay for what they buy, do they?

Mr. CROMWELL. An order might have been drawn on the Treasury.

Senator TALIAFERRO. You could not very well do that, I fancy. You say there was some particular stress of negotiation connected with that transaction?

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. Was that stress of negotiation connected with any of the other transactions in the purchase of this stock?

Mr. CROMWELL. There were three other lots grouped with this one lot in opposition to the sale of the stock.

Senator MORGAN. In opposition, did you say?

Mr. CROMWELL. In opposition to the sale of the stock.

Senator MORGAN. In whose hands were they grouped?

Mr. CROMWELL. They were grouped together, four parties, represented by Mr. John B. Manning, who held himself 234 shares.

Senator TALIAFERRO. Do you mean that Mr. Manning represented these several interests in the stock?

Mr. CROMWELL. I mean that the others were grouped with him. He did not officially represent them, but they worked together. They stood together.

Senator TALIAFERRO. Did they get the same price for their stock that he got for his?

Mr. CROMWELL. No; I succeeded in dividing them in the course of my negotiation, and by getting at them directly I succeeded in getting their shares for $200 a share.

Senator TALIAFERRO. Yes.

Mr. CROMWELL. And when I had thus separated the group I captured his stock at $280.

Senator MORGAN. Was that before the Secretary of War had requested you to buy them at a certain figure?

Mr. CROMWELL. After he had authorized me to buy the stock at 105. I then presented the facts to the Secretary of War in writing, and after considering the subject he indorsed it with a letter of thanks.

Senator MORGAN. So that, Mr. Cromwell, you paid for 234 shares of this stock $280 a share?

Mr. CROMWELL. I did, sir.

Senator TALIAFERRO. For 20 shares you paid $200 a share, and for 10 shares additional you paid $200 a share?

Mr. CROMWELL. Yes, sir; for 30 shares I paid $200 a share.

Senator TALIAFERRO. When the highest market value, or the highest price ever before paid for that stock was 105, paid by you?

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. And when the subject of acquiring that stock by condemnation had been acted upon favorably by each House of the United States Congress?

Mr. CROMWELL. Yes, sir.

Senator TALIAFERRO. That is all I wish to ask. I would suggest that these papers go in the record, if you have no objection, Senator.

Senator MORGAN. Yes; let them go in.

(The papers referred to are as follows:)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, April 17, 1906.

Hon. JOHN T. MORGAN,
United States Senate.

SIR: I have the honor to acknowledge the receipt of your letter of the 14th instant, requesting copy of the final account of William Nelson Cromwell for the purchase of stock of the Panama Railroad.

In reply, find herewith copy of his account, prepared by the Auditor for the War Department.

Respectfully,

H. A. TAYLOR,
Acting Secretary.

ISTHMIAN CANAL AFFAIRS,
OFFICE OF ADMINISTRATION,
Washington, D. C., October 28, 1905.

Final account of Wm. Nelson Cromwell for purchase of Panama Railroad Company stock for the Secretary of War.

I certify that the annexed copy of the account is a true copy of the original now on file in this office, with the certificates of stock; that the certificates of all the shares of stock referred to in said account have been transferred to the Secretary of War and received into my possession; that the contracts and options for purchase of the shares of the thirteen stockholders who are now directors of the Panama Railroad Company, which contracts acknowledge the receipt of the $10 paid to each, are on file in this office; that the receipts of Messrs. Simmons, Parker, Cromwell, Felton, Hopkins, Drake, and Brown,

for $100 each, are also on file with the certificates, and that the account is correct.

W. LEON PEPPERMAN,
Acting Chief of Office.

NEW YORK, *October 19, 1905.*

United States of America, in account with Wm. Nelson Cromwell.

[Final account No. 3, Panama Railroad stock purchase.]

Mar. 15.	Paid for cable by Von Hoffman, banker, in further purchase 10 shares from Ugo Cohen	$5.75
Apr. 4.	Paid Mrs. Mary C. Mackay for 5 shares, as per contract filed	500.00
	Paid fee of Mr. Richard T. Mackey, attorney for Mrs. Mackay, for advice to her upon agreement, correspondence, etc	25.00
Apr. 10.	Paid Messrs. Simmons, Parker, Cromwell, Felton, Hopkins, Drake, and Brown $10 each on account of purchase price of $100 for their respective single shares	70.00
Apr. 12.	Paid G. Whaley, of Paris, for 1 share, as per receipt herewith	100.00
Apr. 20.	Paid, as per receipts herewith, balance of $90 each to Messrs. Felton, Simmons, Hopkins, Brown, Parker, Cromwell, and Drake, upon purchase from them of their original one share held as directors	630.00
	(These shares had been sold to the Government at $100 per share; $10 had been paid on account of each share under written option of purchase to qualify as directors. This $90 represents the balance of the purchase price of $100.)	
	Paid Messrs. Endicott, Edwards, Cromwell, Farnham, Hains, Harrod, Magoon, Shonts, Wallace, Drake, Obaldia, Parsons, and Ernst, $10 each under contracts of sale dated May 6, 1905, and as per receipts therein embodied	130.00
		1,460.75

Received payment in full.

VOUCHER.

The United States (Isthmian Canal Commission), to William Nelson Cromwell, Dr.

[Appropriation: "Canal connecting the Atlantic and Pacific oceans."]

1905.		Amount.
	For costs and expenses incurred under the direction of the Secretary of War in the purchase of stock of the Panama Railroad Company, as per statement attached hereto	$1,460.75
	Total	1,460.75

Examined by—

OCTOBER 18, 1905.

Audit No. 3607.

Examined and recommended for approval for one thousand four hundred sixty dollars and seventy-five cents.

E. S. BENSON, *General Auditor.*

OCTOBER 18, 1905.

Approved for the amount recommended and payment authorized.
By direction of the chairman:

W. LEON PEPPERMAN,
Acting Chief of Office.

WASHINGTON, D. C., *January 16, 1906.*

Received from James G. Jester, disbursing officer, Isthmian Canal Commission, the sum of one thousand four hundred sixty and 75/100 dollars in full for the above bill, which I certify to be correct.

WM. NELSON CROMWELL,
49 Wall Street, New York City.

Paid by check No. 11544, dated January 16, 1906, for $1,460.75, on assistant treasurer United States, New York, in favor of Wm. Nelson Cromwell.

VOUCHER.

The United States (Isthmian Canal Commission) to William Nelson Cromwell, Dr.

[Appropriation: "Canal connecting the Atlantic and Pacific oceans."]

Req. No. ——.

PURCHASE PANAMA RAILROAD STOCK.

1905.		
Mar. 6.	Amount paid J. B. Manning for 234 shares, as per voucher herewith	$65,520
	Amount paid U. Permelo and ——— for 20 shares, as per voucher herewith	4,000
15.	Amount paid Ugo Cohen, through L. Van Hoffman & Co., for 10 shares, as per voucher herewith	2,000
16.	Amount paid G. G. Guion, executor estate Charles Coudert for 1 share, as per voucher herewith	100
25.	Amount paid estate Williama Murray, per Czarnikow, MacDougall & Co., Limited, for 5 shares, as per voucher herewith	500
		72,120

(Authority for the purchase and acknowledgment of the receipt of the certificate for the 270 shares of stock are shown by the letter of the Secretary of War, dated March 29, 1905, and the letter of Col. C. R. Edwards, Chief of Bureau of Insular Affairs, dated March 30, 1905.)

Audit No. 790. MARCH 30, 1905.

Examined and recommended for approval for seventy-two thousand one hundred and twenty dollars.

W. P. ARMSTRONG,
Auditor Isthmian Canal Commission.

MARCH 30, 1905.

Approved for the amount recommended by the auditor and payment authorized.

J. G. WALKER,
Chairman of Commission.

WASHINGTON, D. C., *March 31, 1905.*

Received from A. S. Kenny, treasurer Isthmian Canal Commission, the sum of seventy-two thousand one hundred twenty dollars in full for the above bill.

WM. NELSON CROMWELL.

Paid by check No. 262, dated April 3, 1905, for $72,120 on assistant treasurer United States, New York.

WAR DEPARTMENT,
Washington, March 29, 1905.

DEAR SIR: Mr. William Nelson Cromwell, the general counsel of the Panama Railroad Company, has, since the adjournment of Congress, in addition to the 728 shares of stock referred to in my letter

of March 9, 1905, purchased 270 shares more of said stock at a cost of $72,100, in accordance with the account which I send herewith. This includes all but a few dollars of expense in and about the purchase of the stock, which Mr. Cromwell is not now able to state, but will give me an itemized statement at a later day. The higher price at which some of this stock has been purchased has been due to the willingness on the part of the owner of the stock to acquire for it its nuisance value, and I have made the purchase only after the most careful consideration by the President and myself and the full belief in the necessity for paying the money required.

There remain outstanding of the shares of stock 8 shares owned by present and recent directors, which are to be held under an option of purchase by the Government, and 5 shares which Mr. Cromwell has been able to trace and now holds under contract for delivery in due course. Please direct the issuing of a draft payable to William Nelson Cromwell for the sum of $72,120, as shown by the account and vouchers herewith, and forward the same to him at once at his New York office, No. 49 Wall street.

I also transmit a copy of Mr. Cromwell's letter to me in reference to this last purchase of stock, dated the 28th instant, and my reply to him of this date, in order that you may have a complete file of the correspondence under which this purchase was made.

Very respectfully,

WM. H. TAFT,
Secretary of War.

Rear-Admiral JOHN G. WALKER,
Chairman Isthmian Canal Commission, Washington, D. C.

WAR DEPARTMENT,
BUREAU OF INSULAR AFFAIRS,
Washington, March 30, 1905.

SIR: By direction of the Secretary of War, in accordance with your telephone request, the letter of the Secretary of War to you of March 29, stating that Mr. William Nelson Cromwell had purchased 270 shares of the stock of the Panama Railroad Company, and directing you that you issue a draft payable to him in the sum of $72,120, as shown by the account and vouchers transmitted with such letter, is hereby amended by adding the statement that said shares were duly received by the Secretary of War and have been transmitted to the office of the Panama Railroad Company in New York for transfer upon the books of the company and issuance of a new certificate of stock in the name of the Secretary of War.

Very respectfully,

C. R. EDWARDS,
Colonel, U. S. Army, Chief of Bureau.

Rear-Admiral JOHN G. WALKER, U. S. Navy (Retired),
Chairman of the Isthmian Canal Commission,
Washington, D. C.

WASHINGTON, D. C., *March 28, 1905.*

MY DEAR MR. SECRETARY: Re Panama Railroad stock purchase. Further to my report of the 8th instant and your reply of the same date, I beg to advise you of the consideration and policy which determined me to proceed upon my own responsibility to acquire the balance of the outstanding stock after I had exhausted the authority which you had conferred upon me.

Under your authorization of January 16 last I had actively proceeded, and little by little had secured from the holders in England, France, Italy, and the United States all but 275 shares by the time the offer expired (counting the eight single shares owned by the eight present and recent directors as already in friendly hands). Although the results above mentioned had been so greatly to improve and strengthen the position of the United States, I realized, perhaps more than any other man, the supreme importance—indeed the absolute necessity—from the standpoint of the nation, to obtain absolute ownership of the Panama Railroad Company, and that quickly.

The railroad is an indispensable factor in the construction of the canal; and it, as well as the steamship line, is necessary as an instrument of canal construction, as well as for the protection of the vast national interests on the Isthmus. The limitation upon the management, owing to other stock interests, would inevitably retard the work of construction and vastly increase the cost of the canal, while probably leading to grave litigation.

The railroad concession is of incalculable value to the United States and confers rights which, in my opinion, are additional to those conferred upon the United States by the Panama-United States treaty; and this concession is owned by the Panama Railroad.

Under the railroad concession it is provided that there shall not be undertaken, without the concurrence and consent of the railroad company, the opening of any maritime canal across the Isthmus of Panama, uniting the Atlantic and Pacific, without payment to the railroad company of an equitable price for such privilege and as indemnification for the damage which the railroad company may suffer by the rivalry or competition of the canal. You will appreciate the significance of this.

If the operations of the railroad company were conducted especially in the interests of the United States as the chief stockholder, and not for the common interest of all stockholders alike, application for injunction and receivership would be made to the courts of the State of New York, by the legislature of which State the charter of the company was granted.

Both the Senate and House of Representatives have passed bills declaring that the Panama Railroad stock was necessary for the United States and providing for the condemnation of the same under the right of eminent domain; the bill passed by the Senate also conferred authority upon the President to purchase all outstanding stock at such price as he might deem advisable. These bills failed of enactment through differences between the two Houses upon other points, and it transpired that, while both Houses of Congress clearly evidenced this purpose, they failed to execute it, and the President was deprived of the powers which it would have conferred.

The subcommittee of the Interstate and Foreign Commerce Committee of the House of Representatives, appointed under a resolution

of the House to inquire into the plans and management of the Panama Railroad Company, made exhaustive inquiry and took voluminous testimony in performance of its duties. On March 3 it made its unanimous report, fully indorsing the management as conspicuously able, progressive, and businesslike, and added: "The committee is of the opinion that the United States should secure ownership of the entire stock of the Panama Railroad Company." For these and other considerations, which seemed to me of the highest national concern, I felt impressed with the patriotic duty to completely master the situation in interest of my Government, regardless of the fact whether I was reimbursed or not. The duty was before me, and it seemed that I alone could deal with it. Therefore I quickly, and by extreme effort, succeeded in securing from the various parties 270 out of the remaining 275 shares, and I hold the contract of the owner of the last 5 shares to deliver the same upon return from Europe.

The transactions concerning these 275 shares have all occurred since the adjournment of Congress. I have paid for 270 of these shares the sum of $72,120 to the several owners thereof, whose receipts for the payments I hand you herewith, and will make payment of the last five shares upon actual delivery. All this has been done by me in the spirit of a national duty and pride, and I, of course, place the stock at the command of my Government at its actual cost to me—the sum I have just mentioned.

As you know, I have not permitted the thought of compensation or profit to me to be even entertained in the entire affair; and I now add that if the Government finds that there is any limitation upon its power to acquire the stock, I will cheerfully carry it for the Government, and subject to the same conditions above mentioned (together with irrevocable proxy to the Government to vote thereon) until such time as any legislation be obtained which the President may consider desirable. Thus I have succeeded, my dear Mr. Secretary, in acquiring the entire capital stock.

I have the honor to be, very truly, yours,

WM. NELSON CROMWELL.

Hon. WILLIAM H. TAFT,
Secretary of War, Washington D. C.

United States of America in account with William Nelson Cromwell re Panama Railroad stock purchase.

1905.		
Mar. 6.	Amount paid J. B. Manning for 234 shares, as per voucher herewith	$65,520
	Amount paid U. Parmelo for 20 shares, as per voucher herewith	4,000
15.	Amount paid Ugo Cahen, through L. Van Hoffman & Co., for 10 shares, as per voucher herewith	2,000
16.	Amount paid G. G. Gulon, executor estate Charles Coudert, for 1 share, as per voucher herewith	100
25.	Amount paid estate William Murray, per Czarnikow, MacDougall & Co. (Limited), for 5 shares, as per voucher herewith	500
		72,120

WAR DEPARTMENT,
Washington, March 29, 1905.

MY DEAR MR. CROMWELL: I beg to acknowledge receipt of your letter of the 28th instant, explaining the circumstances of the purchase by you of the remaining 275 shares of stock of the Panama Railroad Company, in addition to the 728 shares you have previously purchased under authority of the President and myself. I have conferred with the President in respect to this matter, and also with a number of prominent Senators and Representatives, whose acquaintance with the situation made me feel their advice to be of special value, and we all regard the purchase as of the utmost benefit to the Government, and a feat which, but for your assistance, would have been exceedingly difficult to accomplish.

I can not exaggerate the importance to the Government of securing all the shares of stock, and therefore I tender to you, on behalf of the President and myself, our sincere thanks for the very great rapidity and success with which you have brought about this much-desired result. I can not fail to note the patriotism and unselfishness that prompted it, and the fact that you will not permit me to hand you, as I might reasonably do, a substantial sum in compensation for your services, which have been of such great value to the Government.

Very sincerely, yours,

WM. H. TAFT,
Secretary of War.

Mr. WILLIAM NELSON CROMWELL,
General Counsel of the Panama Railroad Company,
49 Wall Street, New York, N. Y.

VOUCHER.

The United States (Isthmian Canal Commission) to William Nelson Cromwell, debtor.

[Appropriation: "Canal connecting the Atlantic and Pacific oceans."]

Req. No. ——.

Re Panama Railroad stock purchase.

1905.		
Jan. 17 to Mar. 5.	To amount disbursed through Bankers' Trust Company, depositary, in purchase of 728 shares of Panama Railroad stock, as per attached account	$72,800.00
	To advertising, as per voucher herewith	304.90
	To printing and mailing, as per voucher herewith	32.59
	To trust company's charge, as per its account herewith	300.00
		73,437.49

(The authority for the purchase and acknowledgment of the receipt of the certificate for the 728 shares of stock are shown by the letter of the Secretary of War, dated March 8, 1905, hereto attached.)

MARCH 10, 1905.

Audit No. 701.

Examined and recommended for approval for seventy-three thousand four hundred thirty-seven dollars and forty-nine cents.

W. P. ARMSTRONG,
Auditor Isthmian Canal Commission.

MARCH 10, 1905.

Approved for the amount recommended by the auditor, and payment authorized.

J. G. WALKER,
Chairman of Commission.

WASHINGTON, D. C., *March 14, 1905.*

Received from A. S. Kenny, treasurer Isthmian Canal Commission, the sum of seventy-three thousand four hundred thirty-seven dollars and forty-nine cents, in full for the above bill.

WM. NELSON CROMWELL.

Paid by check No. 210, dated Mar. 14, 1905, for $73,437.49, on assistant treasurer United States, New York.

WAR DEPARTMENT,
Washington, March 8, 1905.

DEAR SIR: Mr. William Nelson Cromwell, the general counsel for the Panama Railroad Company, under authority conferred by me upon him by letter of January 16 last, has purchased 728 shares of the stock in the Panama Railroad Company, and has transferred the shares to me in my name as Secretary of War, and has delivered the certificates to me accordingly. The cost of those shares, including advertising, printing, mailing, and trust company's charges, was $73,437.49, as shown by the account and vouchers herewith. Please direct the issuing of a draft payable to William Nelson Cromwell for this sum and forward the same to him at once.

I transmit also a memorandum of the purchase of stock handed to me by Mr. Cromwell, showing the purchases in detail.

I transmit also a copy of my letter of January 16 to Mr. Cromwell, in order that you may have a complete file of the correspondence under which this purchase was made.

Very respectfully, yours, WM. H. TAFT,
Secretary of War.

Rear-Admiral JOHN G. WALKER, U. S. Navy,
Chairman of the Isthmian Canal Commission,
Washington, D. C.

NEW YORK, *March 7, 1905.*

United States of America, in account with William Nelson Cromwell.

Re Panama Railroad stock purchase.

1905.		
Jan. 17 to Mar. 5.	To amount disbursed through Bankers' Trust Company, depositary in purchase of 728 shares of Panama Railroad stock, as per attached account	$72,800.00
	To advertising, as per voucher herewith	304.90
	To printing and mailing, as per voucher herewith	32.90
	To trust company's charge, as per its account herewith	300.00
		73,437.49

WAR DEPARTMENT,
Washington, January 16, 1905.

MY DEAR MR. CROMWELL: We have secured from the New Panama Canal Company 68,887 shares of the capital stock of the Panama Railroad Company and since that time have purchased 100 shares additional, leaving a balance of 1,013 shares.

The President is desirous of obtaining the remaining shares of stock for convenience in the administration of the railroad as an

instrument in the building of the canal. As you negotiated the sale of the property of the New Panama Canal Company to the Government, and have been general counsel for the Panama Railroad Company, you will doubtless have greater facility in reaching the minority stockholders than anyone else who could assist us in the matter.

I therefore authorize you to buy all the shares of stock of the Panama Railroad Company outstanding, at a price of par and 5 per cent in lieu of dividend, agreeing, on behalf of the President and the Government of the United States, to make you whole in all the reasonable expenses which may be incurred in the negotiation and purchase of these shares.

It is my purpose to invite Congress to pass an act authorizing the Attorney-General to begin a proceeding to condemn the outstanding shares in a Federal court in the State of New York, because the shares have their legal situs within that jurisdiction, but of course if we are able to obtain the shares by negotiation it will save all parties in interest expense and annoyance. I add this that those who now hold the shares may understand the attitude of the Government with respect to them.

Very respectfully, yours,

WM. H. TAFT,
Secretary of War.

WM. NELSON CROMWELL, Esq.,
49 Wall Street, New York City.

BANKERS' TRUST COMPANY,
New York, March 7, 1905.

Mr. William Nelson Cromwell, in account with Bankers' Trust Company, Dr.

To services as your banker, purchasing certain stock of the Panama Railroad Company ---------- $300

Received payment.

BANKERS' TRUST COMPANY,
By B. STRONG, Jr., *Secretary.*

Mr. CROMWELL. It is proper to say, Senator, and I have no doubt you wish me to say it, that action by the two Houses of Congress was of a very different character, namely, it was merely to authorize the condemnation of these shares. That condemnation would be a lawsuit of a character which would be open to contest, involving the most difficult questions which you could present—the great question as to whether the United States could condemn the shares of a private citizen. Such a question as that would be contested and fought from the very beginning, through every court in the land; and therefore legislation, while it could be enacted by Congress, would not be equivalent to getting the stock. You would only get the stock, under legislation, after years of litigation. Therefore, condemnation proceedings, while a very good thing to resort to as a last resort, are only a procedure of any value as a last resort. The procedure by purchase enabled me to acquire all of the capital stock of this company for the benefit of this Government without compensation to myself or benefit of a farthing, either for my time, service, or outlay. I am very proud of the transaction. It resulted in the Government's acquiring com-

plete ownership of the stock and saving to itself enormously in the management of the property.

Senator TALIAFERRO. It has been suggested here that my question on the subject of your purchase of this stock without authority from the Secretary of War was of such a nature as might lead to the understanding that you were buying this stock for speculative purposes. I wish to give you the opportunity to correct any such impression as that.

Mr. CROMWELL. I thank you, Senator. I know that you are always manly and frank about such matters, and I want to say that I appreciate it. I purchased these shares because I knew that it was a desperate situation, and that if I did not purchase them on the spot the Government probably never would have had them, and to-day you would still have a minority outstanding, with all the horrible consequences of a minority outstanding. I would have paid anything for those shares.

Senator TALIAFERRO. You say there is a minority outstanding?

Mr. CROMWELL. There would have been.

Senator MORGAN. Those consequences were not very horrible while you had a minority outstanding, under the rule of the Panama Canal Company?

Mr. CROMWELL. That was a very different situation. Then the railroad was being run for commercial purposes and for the interests of its stockholders—all of them. At the time of the purchase the railroad was not being conducted for the benefit of all its stockholders, and everybody knew it. It was being conducted for the benefit of the United States in disregard of the rights of that minority, and there is no doubt that any minority stockholder could have brought suit and had an injunction issued and a receivership of the Panama Railroad in the twinkling of an eye; and any lawyer who knew the case knew it.

Senator MORGAN. I did not know it. I suppose I am not lawyer enough.

Mr. CROMWELL. It was those consequences that were saved by the purchase of the stock.

Senator TALIAFERRO. They could not have done that, I apprehend, if the Government had exercised its option and taken over this stock.

Mr. CROMWELL. What option, sir?

Senator TALIAFERRO. The option that you gave to acquire your stock, and the other directors. The Government takes over this property and wipes out that ownership, and you could not get a receivership for the railroad?

Mr. CROMWELL. You and I are talking at cross-purposes, Senator. I was referring, sir, to the possibility of my not acquiring these Manning and other shares.

Senator TALIAFERRO. That is what I was referring to.

Mr. CROMWELL. If I had not acquired those shares at this high price the United States to-day would not be the owner of all the stock, and there would be a minority outstanding.

Senator TALIAFERRO. It does not necessarily follow that you would have a receiver?

Mr. CROMWELL. That minority, represented by those shares, would have had no difficulty whatever in putting the Panama Railroad in the hands of a receiver.

Senator TALIAFERRO. After it had become the property of the United States?

Mr. CROMWELL. It had not become the property of the United States.

Senator TALIAFERRO. It had with the exception of that stock?

Mr. CROMWELL. That is just the point. It was with the exception of that stock. And those minority shareholders could have insisted that the Panama Railroad be conducted as an independent corporation for the benefit of its stockholders, of which those men were a part.

Senator MORGAN. How many of these were there at the time this action was taken by the two Houses of Congress, besides yourself?

Mr. CROMWELL. About fifty.

Senator MORGAN. Besides yourself?

Mr. CROMWELL. Yes, sir; altogether the list is about forty or fifty.

Senator MORGAN. Altogether; but how many besides yourself were there?

Mr. CROMWELL. The total number represented by the minority at the time I undertook this duty was between forty and fifty—the total list.

Senator MORGAN. You were one of that number?

Mr. CROMWELL. I was one of the number; certainly.

Senator MORGAN. I want to know how many others there were besides yourself.

Mr. CROMWELL. As many more as would be made up by the subtraction of one from that number.

Senator MORGAN. By the subtraction of one from the number?

Mr. CROMWELL. By the subtraction of one from the forty or fifty. That would be the number that remained, outside of myself.

Senator MORGAN. There was one stockholder, then, besides you?

Mr. CROMWELL. We do not seem to understand each other, Senator.

Senator MORGAN. I do not think we do.

Mr. CROMWELL. I say the total number of people—not the number of shares.

Senator MORGAN. Well, the total number of people.

Mr. CROMWELL. The total number of persons owning the minority stock when I began this work of acquiring the shares was between 40 and 50 persons.

Senator MORGAN. And you were 49 of them?

Mr. CROMWELL. I was one of the 40 or 50 persons.

Senator MORGAN. Oh! I thought you were 49 of them.

Senator TALIAFERRO. Do you know any person living in this country who was a stockholder in the Panama Canal Company—the old or new French company?

Mr. CROMWELL. I never have had any knowledge, sir, as to who they were. There are one or two banking houses who had foreign connections, with some American representation here, who I have heard from time to time had some stock abroad.

Senator TALIAFERRO. Do you know, of your own knowledge, of any individual in this country—any American citizen—who was a stockholder in the French company, either the old company or the new?

Mr. CROMWELL. I do not, Senator. I know of one or two banking houses who had foreign connections who were said to have had

some of the old canal stock; but whether they had or not I do not know. They never even said so to me, but I understood that they had. I will answer your question squarely by saying that I do not know of a stockholder of the old Panama Canal Company in this country, or of the new company, who was a citizen of this country.

Senator MORGAN. You have described a very horrible situation—imaginary, of course—in which the United States would have been put by the minority stockholders in this company, and you have shown how you succeeded in relieving the Government from that wretched situation. Now I want to get at the point as to how many individuals there were and who they were that would have suffered this outrage at the hands of the United States Government, if it had chosen to impose it.

Mr. CROMWELL. Between 40 and 50 persons.

Senator MORGAN. You were one of the number?

Mr. CROMWELL. I was one of the persons, in that I was one of the minority.

Senator MORGAN. What amount of stock did you hold then?

Mr. CROMWELL. Permit me to put in the exact number of shares. I think it is 29, 30, or 31.

Senator TALIAFERRO. You do not exactly mean that, I fancy, because I think that Senator Morgan is referring to the stockholders to whom you paid this unusual——

Mr. CROMWELL. No; he was not, Senator, I think.

Senator TALIAFERRO (continuing). To whom you paid this unusual and exorbitant price for the stock.

Mr. CROMWELL. I think not, Senator.

Senator MORGAN. I am speaking, first of all, of the stockholders; then I will get at that other part of it.

And then, in order to relieve the Government from the oppression and the disturbance in its business that you describe as being horrible——

Mr. CROMWELL. As being serious and grave.

Senator MORGAN (continuing). You assumed the task of buying up this other stock, paying for it out of your own pocket?

Mr. CROMWELL. I took the responsibility of acquiring these four lots, at a price in excess of that which had been authorized by the Secretary of War.

Senator TALIAFERRO. The price being?

Mr. CROMWELL. That price being 105.

Senator TALIAFERRO. And the price you paid for this stock being?

Mr. CROMWELL. The price of this being, in respect of 234 shares, $280 a share; and in respect of 30 shares, $200 a share.

Senator MORGAN. The Secretary of War having admeasured the value of this stock at the price you have mentioned—what was it?

Mr. CROMWELL. One hundred and five dollars.

Senator MORGAN. Yes. You took the responsibility of buying it up at $280?

Mr. CROMWELL. I took the responsibility of buying 234 shares at $280 and shares at $200.

Senator MORGAN. You took that responsibility yourself?

Mr. CROMWELL. I did; and I am very proud of it.

Senator MORGAN. I have no doubt that you are.

Mr. CROMWELL. Because it enabled me to complete the purchase of all the stock for the benefit of the United States.

Senator MORGAN. Yes.

Mr. CROMWELL. And to give you a complete unit.

Senator MORGAN. That was to forestall the action of the Secretary of War and to do something that he had not contemplated in the way of diplomacy?

Mr. CROMWELL. It was to accomplish the great purpose for which we were all so anxious, namely, the acquiring of all of this stock.

Senator MORGAN. But they did not acquire it all? The Government did not acquire it all?

Mr. CROMWELL. It did acquire it all by reason of my action.

Senator MORGAN. With the understanding that they would sell back a share to each one of the directors—to men that they wanted for directors?

Mr. CROMWELL. There was no understanding of that kind in the case.

Senator MORGAN. Oh, yes; you said there was.

Mr. CROMWELL. I say there was no understanding of that kind in the case.

The CHAIRMAN. Senator Morgan, you may recall that when Mr. Cromwell was here before he gave to us for examination some Panama coins. I suppose we are through with them now?

Senator TALIAFERRO. I move that they be returned to Mr. Cromwell.

Senator MORGAN. I have no interest in it. I merely wanted to show how easy it was to fool those negroes down there by making two coins of the same size and of different values. [Laughter.]

(The committee thereupon adjourned until to-morrow, Friday, May 11, 1906, at 10.30 o'clock a. m.)

ISTHMIAN CANAL.

COMMITTEE ON INTEROCEANIC CANALS,
UNITED STATES SENATE,
Washington, D. C., Friday, May 11, 1906.

The committee met at 10.30 o'clock a. m.

Present: Senators Millard (chairman), Kittredge, Morgan, and Taliaferro.

TESTIMONY OF WILLIAM NELSON CROMWELL, ESQ.—Continued.

Senator MORGAN. Mr. Cromwell, on page 1112 of your former testimony I will read what occurred.

Mr. CROMWELL. Before you read, Senator, permit me to make a remark, so as not to interrupt the line of your inquiry.

Senator MORGAN. Yes.

Mr. CROMWELL. There are two topics upon which I have been charged by the previous examination to furnish further evidence, and I have been gathering it for this purpose. That of yesterday concerned the purchase of the shares of the Panama Railroad Company minority holdings. I was to furnish certain other material, and I have gathered it and am ready now to present it.

Senator MORGAN. Then present that, and let us get it in the record.

Mr. CROMWELL. The second subject related to the Pacific Mail contracts, concerning which Senator Morgan interrogated me on Tuesday last, and with reference to which I was also to furnish some narrative of the successive contracts relating to the Pacific Mail. I am also prepared upon that point to make a further statement.

Senator MORGAN. Let us have it, then.

Mr. CROMWELL. Those topics I will take up in their order.

Senator MORGAN. Just put them in the record.

Mr. CROMWELL. I have not prepared them in writing. I am pre pared to state them.

Senator MORGAN. Very well. State them, then.

Mr. CROMWELL. With reference, then, to the subject of the purchase of the minority of the Panama Railroad shares, concerning which, as I said yesterday, I had not then before me the memoranda, accounts, and records, because I had filed the accounts with the Secretary of War——

Senator MORGAN. One moment. Let me ask you a question while I think of it. Did I understand you to say yesterday that the minutes of the Panama Railroad Company are printed?

Mr. CROMWELL. No, sir; they never were printed, sir. They are embodied in the minute books which are here with the committee. The annual reports, however, were printed, and it is those, perhaps, to which reference was made.

I shall make this statement consecutive, so as to be of assistance to you, with reference to the purchase of the minority stock of the Panama Railroad Company.

I was charged with the duty upon that subject under the following letter of the Secretary of War, dated January 16, 1905 [reading]:

WAR DEPARTMENT,
Washington, January 16, 1905.

MY DEAR MR. CROMWELL: We have secured from the New Panama Canal Company 68,887 shares of the capital stock of the Panama Railroad Company, and since that time have purchased 100 shares additional, leaving a balance of 1,013 shares.

The President is desirous of obtaining the remaining shares of stock for convenience in the administration of the railroad as an instrument in the building of the canal. As you negotiated the sale of the property of the New Panama Canal Company to the Government and have been general counsel for the Panama Railroad Company, you will doubtless have greater facility in reaching the minority stockholders than anyone else who could assist us in the matter.

I therefore authorize you to buy all the shares of stock of the Panama Railroad Company outstanding at a price of par and 5 per cent in lieu of dividend, agreeing, on behalf of the President and the Government of the United States, to make you whole in all the reasonable expenses which may be incurred in the negotiation and purchase of these shares.

It is my purpose to invite Congress to pass an act authorizing the Attorney-General to begin a proceeding to condemn the outstanding shares in a Federal court in the State of New York, because the shares have their legal situs within that jurisdiction, but of course if we are able to obtain the shares by negotiation it will save all parties in interest expense and annoyance. I add this that those who now hold the shares may understand the attitude of the Government with respect to them.

Very respectfully, yours,

WM. H. TAFT,
Secretary of War.

WM. NELSON CROMWELL, Esq.,
49 Wall Street, New York City.

Senator MORGAN. Turn back in that letter and repeat that remark "as you negotiated," etc. What was that?

Mr. CROMWELL (reading): "As you negotiated the sale of the property of the New Panama Canal Company to the Government and have been general counsel"——

Senator MORGAN. Is that a fact; did you do that?

Mr. CROMWELL. I assisted in the negotiation.

Senator MORGAN. Did you do it by yourself?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. In what capacity?

Mr. CROMWELL. As general counsel of the Panama Canal Company.

Senator MORGAN. That was the sale, now, of the property of the Panama Canal Company, of every kind and character, to the United States that you negotiated?

Mr. CROMWELL. It was the sale as the offer of the canal company describes; a sale of the totality of the property on the Isthmus.

Senator MORGAN. The totality?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. I never did know what totality meant, unless it meant it all. Did it mean anything less than all?

Mr. CROMWELL. The totality of its property on the Isthmus, which comprised its physical properties there, and I construed it liberally to mean also the shares of the Panama Railroad Company, although it did not describe the shares.

Senator MORGAN. How about the concessions?

Mr. CROMWELL. It included the concessions.

Senator MORGAN. All of them?

Mr. CROMWELL. All of them.

Senator MORGAN. From Colombia to Panama?

Mr. CROMWELL. All the then-existing concessions from Colombia to Panama.

Senator MORGAN. And all that had passed from Colombia to Panama by the resurrection—or insurrection——

Mr. CROMWELL. Resurrection is just the word, Senator.

Senator MORGAN. I do not know what word to use, precisely, in——

Mr. CROMWELL. I think resurrection is a very apt word.

Senator MORGAN. The "transformation." I will put it that way.

Mr. CROMWELL. Inspiration.

Senator MORGAN. Well, it included all that?

Mr. CROMWELL. The offer of the canal company, sir, was dated January 9–11, 1902, at which time Colombia was sovereign of the Isthmus.

Senator MORGAN. Was that the contract, that you speak of now, in 1902, that was made with the United States?

Mr. CROMWELL. The offer of the canal company to the United States dated January 9–11, 1902.

Senator MORGAN. But that is not the one under which we took the property?

Mr. CROMWELL. It was in pursuance of that that we took the prop erty.

Senator MORGAN. How in pursuance of it?

Mr. CROMWELL. In consummation of it.

Senator MORGAN. In consummation?

Mr. CROMWELL. Yes.

Senator MORGAN. Then that offer of 1902 and the later offer were parts of the same transaction, and the one was in consummation of the other?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. That is the fact?

Mr. CROMWELL. Yes, sir. May I proceed now?

Senator MORGAN. Not exactly just yet. Now, Mr. Cromwell, you negotiated that one of 1902, also?

Mr. CROMWELL. No, sir.

Senator MORGAN. You had no part in that?

Mr. CROMWELL. No; that offer originated in Paris.

Senator MORGAN. I did not ask you where it originated. I want to know whether you had any part in the negotiation?

Mr. CROMWELL. I must respectfully decline to discuss the affairs of the canal company, when I get into the field of negotiations.

Senator MORGAN. We have come to another pitfall in which you take cover, in the midst of a statement; in the midst of a sentence.

Mr. CROMWELL. We come to the principle of law and of privilege to which I have referred.

Senator MORGAN. We will test that privilege somewhere or other that will have some authority to it.

Mr. CROMWELL. I hope so, Senator. Then you will learn more law than you know now.

Senator MORGAN. I want to know, Mr. Cromwell, and I will ask you the question again. Did you participate in that negotiation of the proposition, the offer, and the contract, which I believe was not finally closed at that time, between the New Panama Canal Company and the United States?

Mr. CROMWELL. I respectfully decline to enter into a discussion——

Senator MORGAN. You already stated that you did it.

Mr. CROMWELL. I decline to enter into a discussion of it.

Senator MORGAN. I am not discussing anything with you; I am asking you questions.

Mr. CROMWELL. I refuse to answer, sir.

Senator MORGAN. You refuse to answer?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. Very good. Whatever you did—you state that you did something—did you do that as the employed counsel of the Panama Canal Company?

Mr. CROMWELL. I have already answered that question many times.

Senator MORGAN. Will you please answer it again.

Mr. CROMWELL. I do, by refusing.

Senator MORGAN. Were you acting in any sense in your own right?

Mr. CROMWELL. I again decline to answer.

Senator MORGAN. You refuse to state whether you had any interest in the transaction personally?

Mr. CROMWELL. I refuse to discuss it any further than I have.

Senator MORGAN. You are not discussing it. I am asking you a question, and I want an answer.

Mr. CROMWELL. I make the same answer.

Senator MORGAN. What is the same answer?

Mr. CROMWELL. That I refuse to reply.

Senator MORGAN. At that time you were a stockholder in the Panama Railroad?

Mr. CROMWELL. I was; to the extent of 25 or 30 shares.

Senator MORGAN. And that contract or offer transferred your interest, along with the interest of all the other stockholders?

Mr. CROMWELL. No; it did not.

Senator MORGAN (continuing). To the United States?

Mr. CROMWELL. No; it did not.

Senator MORGAN. Were your interests still remaining in the old Panama Canal Campany?

Mr. CROMWELL. The Panama Railroad Company, you mean?

Senator MORGAN. No; I mean the old Panama Canal Company.

Mr. CROMWELL. I had no interest in the old Panama Canal Company.

Senator MORGAN. You had none at all?

Mr. CROMWELL. None, sir.

Senator MORGAN. They owned a piece of property, and the majority of the stock, in which you had stock, called the Panama Railroad Company?

Mr. CROMWELL. The canal company owned 68,534 shares of the Panama Railroad Company, and I owned 25 or 30, as I have said so many, many, many times.

Senator MORGAN. That is a statement of a fact. Therefore, did you not have a personal interest in the transference of the control of that railroad from the French company to the United States?

Mr. CROMWELL. No, sir. My shares remained absolutely unaffected by it.

Senator MORGAN. Why do you say that?

Mr. CROMWELL. Because it is a fact.

Senator MORGAN. Had you no preference in the matter of transferring the ownership from the Old Panama Canal Company to the United States?

Mr. CROMWELL. My preferences are of no consequence, Senator.

Senator MORGAN. We will ask whether you had them or not.

Mr. CROMWELL. I do not testify to preferences. I am testifying to facts.

Senator MORGAN. Well, I am not discussing this question with you. I am asking you questions.

Mr. CROMWELL. I am answering questions.

Senator MORGAN. And they will be serious answers, too, that you are making. I want you to understand that.

Mr. CROMWELL. I appreciate the seriousness of them.

Senator MORGAN. You refuse to answer that question?

Mr. CROMWELL. I do not refuse; I say that I have already stated.

Senator MORGAN. What have you stated?

Mr. CROMWELL. That my preferences make no difference one way or the other.

Senator MORGAN. Suppose I think they do? Did you have a preference?

Mr. CROMWELL. I do not recollect whether I had any preference or not.

Senator MORGAN. You really do not recall whether you had any preference or not? There is nobody who can answer that question but you.

Mr. CROMWELL. Well, I should think, Senator, that my inclinations were in favor of the sale to the United States

Senator MORGAN. I should think so myself.

Mr. CROMWELL. Although I had very grave doubts of the wisdom of the canal company disposing of its property.

Senator MORGAN. So it was a question debated, but your preference was in favor of disposing of it to the United States?

Mr. CROMWELL. Yes, sir; I should think so, upon the whole.

Senator MORGAN. Was that for the protection of your personal interest or just for the general glory of the situation?

Mr. CROMWELL. The personal interests you must see, Senator, were absolutely insignificant.

Senator MORGAN. Well, I know. Matters of insignificance are still legal matters, oftentimes. Did your preference have any reference at all to what should become of you as a stockholder of these 24 or 34 shares or whatever you had?

Mr. CROMWELL. Certainly not.

Senator MORGAN. If that had been all the property you had in the world, it would have involved your entire estate, would it not?

Mr. CROMWELL. Oh, well, Senator——

Senator MORGAN. But, being a rich man, you could afford to neglect the situation. Was that it?

Mr. CROMWELL. I do not suppose you expect a serious answer.

Senator MORGAN. I really think I am very much in earnest, sir. I want to get at the fact whether your preference was based just upon some idea of the magnitude of the situation and your controlling it, or whether it was based upon your interest in that stock.

Mr. CROMWELL. The interest in the stock had not the least influence upon my judgment or preference.

Senator MORGAN. You stood above that?

Mr. CROMWELL. Certainly.

Senator MORGAN. Now you may go ahead with your statement.

Mr. CROMWELL. Pursuing, then, the topic under consideration, the purchase of the minority holdings: After the letter of January 16, 1905, of the Secretary of War, I prepared and sent to all the minority stockholders a circular letter, of which the following is a copy:

NEW YORK, *January 17, 1905.*

To the stockholders of the Panama Railroad Company:

In connection with the consummation of the transfer by the New Panama Canal Company to the United States, which included about 98½ per cent of the capital stock of the Panama Railroad Company, the President of the United States and the Secretary of War have authorized me to afford the outstanding minority interest an opportunity to realize upon their holdings.

The Isthmian Canal Commission, in their official reports to the President, valued the capital stock at $7,000,000, its par value (which comprehended allowance for all bonded indebtedness and other obligations having priority in liquidation).

Accordingly, you are hereby offered until the 23d day of February, 1905, the privilege of selling and transferring to the United States of America your holdings of the capital stock of the Panama Railroad Company at the par value thereof, payable in United States gold coin, upon compliance with the following conditions:

(*a*) Any dividend, up to 5 per cent, in the meantime declared by the company, shall belong to the selling stockholder.

(*b*) The shares to be duly assigned, with seal affixed, by the registered stockholder to "William H. Taft, Secretary of War of the United States" (either by execution of the form of assignment engraved upon the back of the certificates therefor or by similar separate stock transfer forms).

The assignment by the stockholder to be witnessed by two responsible persons, with their addresses and occupations added (not necessarily a notary or other official).

(*c*) In the cases of estates, trusts, guardianships, bankruptcies, or other fiduciary relations satisfactory documentary and official evidence to be furnished of the title of the signatory parties and of their power to transfer.

(*d*) The certificates for shares so assigned, to be delivered to the Bankers' Trust Company, No. 7 Wall street, New York City, United States of America.

(*e*) Payment will be made by said Trust Company, as my agent, upon such assignment, execution, and delivery.

I advise all minority stockholders to avail of this offer, which will expire at the time mentioned, after which date certain legal proceedings are contemplated to be taken.

WM. NELSON CROMWELL,
General Counsel.

Senator MORGAN. That was a circular to stockholders?
Mr. CROMWELL. Yes, sir.
Senator MORGAN. What was the date of that?
Mr. CROMWELL. January 17, 1905.
Senator MORGAN. Did the Secretary of War ask you to write a circular letter to those people?
Mr. CROMWELL. Yes, sir. You will see in a moment that he did.
It was accompanied by a form which the parties were requested to sign to signify their assent. The form was as follows (reading):

1905.

Mr. WILLIAM NELSON CROMWELL,
General Counsel, Care of Bankers' Trust Company,
No. 7 Wall street, New York City.

SIR: Referring to your circular letter bearing date January 17, 1905, I / we hereby avail of and accept the offer therein made by you in behalf of the President and Secretary of War of the United States, and accordingly do hereby deliver to your bankers above named certificates Nos. —— —— for —— shares of the capital stock of the Panama Railroad Company, assigned, sealed, and witnessed in accordance with the requirements of said circular letter.

[a] And I / we also present to you documentary and official evidence of my / our title and power to transfer said stock.

Yours, truly,

Name of stockholder: ——— ———.
Residence address: ——— ———.
Business address: ——— ———.

Then on the 25th of January I addressed Secretary Taft the following letter [reading]:

JANUARY 25, 1905.

Hon. WILLIAM H. TAFT,
Secretary of War, War Department, Washington, D. C.

MY DEAR MR. SECRETARY: Re Panama Railroad share purchase. Agreeably to your favor of January 16, charging me with the purchase of the outstanding stock, I have begun active measures in that direction, and which I now beg leave to report:

I. I have issued a circular letter to all the holders of the outstanding stock, as per inclosed circular No. 1, with form of response thereto (No. 2) and return envelope.

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[a] Only necessary in cases of estate, trusts, guardianships, bankruptcies, or other fiduciary relations.

Have also isssued this in the French language to stockholders residing in France.

II. I have selected the Bankers' Trust Company as my banker and depositary to receive and pay for the stock upon conditions enumerated in my circular letter, and I have deposited with them the necessary cash for the purpose.

III. I have addressed friends in Paris and London, where most of the foreign stock is held, and have initiated active cooperation.

IV. The dividend of 5 per centum, of which you approved, has been authorized by the executive committee, subject to the confirmation of the board of directors, which action will be taken to-morrow, and that dividend will be immediately paid out of the accumulated earnings.

V. I deemed it wiser to omit from my circular specific mention of contemplated proceedings to condemn the shares, as that might be construed as a coercive influence and give the selling stockholder cause of grievance against myself as purchaser. After this notice expires I will avail of whatever facts then may be.

VI. I will report to you from stage to stage the progress made, and have the honor to be, my dear Mr. Secretary,

Faithfully, yours,

WM. NELSON CROMWELL,
General Counsel.

Then comes this letter of January 30:

WAR DEPARTMENT,
Washington, January 30, 1905.

MY DEAR MR. CROMWELL: By direction of the Secretary of War I beg to acknowledge the receipt of your favor of January 25, concerning the purchase of the outstanding stock in the Panama Railroad, and to thank you for the same.

Very respectfully, yours,

FRED W. CARPENTER,
Private Secretary.

WM. NELSON CROMWELL, Esq.,
49 Wall street, New York, N. Y.

On January 30 the Panama Railroad Company board of directors met, as you will see by the minutes before you, and declared the dividend of 5 per centum. I will read you the published notice [reading]:

PANAMA RAILROAD COMPANY,
New York, January 30, 1905.

One hundred and twentieth dividend.

The board of directors of the Panama Railroad Company has declared a dividend of 5 per cent on the capital stock of the company, payable at the office, 24 State street, New York, February 1, 1905, to stockholders of record. Transfer books will close January 31, 1905, and open February 3, 1905.

SYLVESTER DEMING, *Treasurer.*

At that time, January 30, the account has been opened with the Bankers' Trust Company, which account I will presently exhibit to

you, and under which stock was invited for deposit. At that day—and I am now answering, Senator Taliaferro, a question which you addressed to me yesterday—I owned 30 shares of stock, represented by certificates numbers——

Senator TALIAFERRO. The certificates are not material.

Senator MORGAN. Yes; let us have them.

Mr. CROMWELL. Senator Morgan thought they were.

Senator TALIAFERRO. Very well.

Senator MORGAN. I want the numbers.

Mr. CROMWELL. On that day, January 25, 1905, I owned 30 shares of stock, represented by three certificates, one numbered 02734, for 23 shares; 02739, for 6 shares, and 02740, for 1 share.

The dividend of 5 per cent declared on January 30, 1905, was paid to all the stockholders of the Panama Railroad Company.

Senator MORGAN. That dividend was mentioned in your circular?

Mr. CROMWELL. The circular offer, as Senator Morgan has just properly mentioned, dated January 17, provided as follows——

Senator MORGAN. That was before the dividend was declared?

Mr. CROMWELL. Before the dividend was declared; yes, sir. That provided that the offer made was for par of the stock, subject to the following conditions [reading]:

"(*a*) Any dividend, up to 5 per cent, in the meantime declared by the company, shall belong to the selling stockholder."

Consequently, the dividend of 5 per cent was paid to and belongs to the selling stockholder, and they were distributed to them. That enabled me to reduce the authority the Secretary had given me to pay 105—to reduce that authority to par—so that I only paid $100 a share for the stock under the final offer.

Senator MORGAN. It appears that you had the whole plan matured at the time that circular was issued?

Mr. CROMWELL. At the time the circular was issued it was contemplated that there might be a dividend of 5 per cent, and that was discussed with the Secretary.

Senator MORGAN. That was discussed with the Secretary?

Mr. CROMWELL. And that is the reason we embraced in the circular a provision that we would pay par.

Senator MORGAN. That was before the dividend was declared?

Mr. CROMWELL. No, sir; that is the reason the dividend topic was under discussion. It was deemed proper to guard against the possibility of paying 105 for the stock and then have another dividend besides to pay. So that this provision guarded against the selling stockholder getting 105 plus the dividend.

Senator MORGAN. What I want to get at is: You and Secretary Taft, you having exhibited that circular to him, agreed upon the programme that you marked out there, did you not?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. And you drew up the whole scheme?

Mr. CROMWELL. I drew up the circular and these papers; yes.

Senator MORGAN. All the scheme; and carried it into execution?

Mr. CROMWELL. I drew up the circular and did my best to make the affair successful.

Senator MORGAN. So that you and Secretary Taft agreed beforehand that a dividend of 5 per cent should be declared on the earnings of this company, and agreed on that before you started this circular afloat?

Mr. CROMWELL. There was no agreement, sir. There could be none.

Senator MORGAN. What was it then, if it was not an agreement?

Mr. CROMWELL. The subject of paying a dividend on the stock of the Panama Railroad Company was one discussed by its board of directors, and was a subject——

Senator MORGAN. I am talking about what you and Secretary Taft had to say to each other about it, and not about the board of directors at all.

Mr. CROMWELL. There was no fixed agreement about it at that time, but the subject was under discussion, and because it was under discussion, very properly reserved in the circular, and was provided for.

Senator MORGAN. Under discussion where?

Mr. CROMWELL. Between the members of the board and the Secretary of War and myself.

Senator MORGAN. What members of the board besides the Secretary of War and yourself?

Mr. CROMWELL. I do not know who else discussed it with him.

Senator MORGAN. Do you know of anybody else?

Mr. CROMWELL. I know that I discussed it with members of the board.

Senator MORGAN. I know; but name a man, any member of the board, with whom it was discussed, besides yourself.

Mr. CROMWELL. I do not know any members of the board who discussed it with the Secretary of War. I was attending to my own end of the business, and supposed that they would attend to theirs.

Senator MORGAN. It looks to me like your end of the business was both ends. That is what I am trying to get separated, if I can do it.

Mr. CROMWELL. Then, it was done all the better.

Senator MORGAN. Yes; you and Secretary Taft had an understanding before you issued that circular that that 5 per cent dividend would be declared?

Mr. CROMWELL. There was no such understanding.

Senator MORGAN. How near did you come to having an understanding?

Mr. CROMWELL. Other than the mere fact that it was discussed, I could hardly say there was a fixed intention, otherwise than that the fact had been discussed that the company had had a profitable year, with large earnings, and that there were sufficient moneys to pay a dividend.

Senator MORGAN. It was sufficiently fixed for you to put it in as one of the stipulations in your circular?

Mr. CROMWELL. Decidedly; because the matter having been under discussion I very properly, I think, took the precaution to provide that in case the dividend was declared it should not be added to the 5 per cent.

Senator MORGAN. Did you not declare in your circular that a dividend would be declared?

Mr. CROMWELL. No, sir.

Senator MORGAN. Read the language, and let us see.

Mr. CROMWELL. The circular says as follows:

"(*a*) Any dividend, up to 5 per cent, in the meantime declared by the company, shall belong to the selling stockholder."

Senator MORGAN. Did you speak that by authority of the Secretary of War?

Mr. CROMWELL. Senator, in the letter of authorization of January 16——

Senator MORGAN. Please just answer my question, without referring to anything else.

(By request, the stenographer read the pending question.)

Mr. CROMWELL. I did, pursuant to authority conveyed by his letter of January 16, in which he said:

"I therefore authorize you to buy all the shares of stock of the Panama Railroad Company outstanding at a price of par and 5 per cent in lieu of dividend."

Senator MORGAN. By authority of the Secretary of War you declared in your circular letter that a dividend would be declared of 5 per cent on the earnings of the railroad company?

Mr. CROMWELL. I did not so declare. I have read it three times to you, Senator. Permit me to read it again.

Senator MORGAN. Yes; read it again.

Mr. CROMWELL (reading). "(*a*) Any dividend up to 5 per cent in the meantime declared by the company shall belong to the selling stockholder."

That is not a statement that a dividend will be declared. It is a provision against the possibility of a dividend.

Senator MORGAN. But the dividend, Mr. Cromwell, "shall belong to the selling stockholder?"

Mr. CROMWELL. Yes, sir.

Senator MORGAN. That is an order.

Mr. CROMWELL. That is a condition of the offer; certainly.

Senator MORGAN. Exactly. And you were authorized to make that by the Secretary of War?

Mr. CROMWELL. Yes, sir; by the provisions of his letter of authority of January 16, in which he says: "I therefore authorize you to buy all the shares of stock of the Panama Railroad Company outstanding, at a price of par and 5 per cent in lieu of dividend."

Senator TALIAFERRO. What does the "therefore" refer to?

Mr. CROMWELL. It refers to the first part of the letter.

Senator TALIAFERRO. What is in the first part of the letter?

Mr. CROMWELL. The first part of the letter is as follows:

"We have secured from the New Panama Canal Company 68,887 shares of the capital stock of the Panama Railroad Company, and since that time have purchased 100 shares additional, leaving a balance of 1,013 shares.

"The President is desirous of obtaining the remaining shares of stock for convenience in the administration of the railroad as an instrument in the building of the canal, etc."

Senator TALIAFERRO. What circular is this that you are discussing with Senator Morgan?

Senator MORGAN. The circular to the minority stockholders. It has been read.

Senator TALIAFERRO. I understand. I was not present when it was read.

Mr. CROMWELL. Under the order and direction I just read, of January 16, I issued the circular letter containing the offer to all the minority stockholders offering them par, not offering them 105, but

offering them par, with the provision that if in the meantime, pending the offer, which was limited to February 23, a dividend up to 5 per cent, not exceeding that and up to that, were declared, it should belong to the selling stockholder.

Senator TALIAFERRO. The theory being that the stock should cost the Government par?

Mr. CROMWELL. That is true; that it should cost the Government par.

Senator TALIAFERRO. Have you bought any of the minority stock for the Government which did not cost more than par?

Mr. CROMWELL. I bought all of the stock, sir, at par, save only the six lots which I yesterday referred to.

Senator MORGAN. At par, less the dividend?

Mr. CROMWELL. No, sir; at par to the Government.

Senator MORGAN. That meant 105?

Mr. CROMWELL. That meant 105, in the sense that the 5 per cent was in lieu of dividend.

Senator MORGAN. Before we adjourn I want to ask you one question: All this arrangement that you have been testifying about this morning, predicated upon your circular letter, was agreed upon between you and Secretary Taft before that letter was issued, was it not?

Mr. CROMWELL. Yes, sir; in substance, of course.

Senator MORGAN. That is all the questions I wish to ask this morning, Mr. Chairman.

(The committee thereupon adjourned until Monday, May 14, 1906, at 2 o'clock p. m.)

ISTHMIAN CANAL.

COMMITTEE ON INTEROCEANIC CANALS,
UNITED STATES SENATE,
Washington, D. C., Tuesday, May 29, 1906.

The committee met at 10.30 o'clock a. m.

Present: Senators Millard (chairman), Kittredge, Dryden, Hopkins, Ankeny, and Morgan.

TESTIMONY OF WILLIAM NELSON CROMWELL, ESQ.—Continued.

The CHAIRMAN. Proceed if you are ready, Senator.

Senator MORGAN. Mr. Cromwell, on pages 3129 and 3130 of your deposition of May 10 you introduced a letter from the Secretary of War, in which he says:

"As you negotiated the sale of the property of the New Panama Canal Company to the Government, and have been general counsel for the Panama Railroad Company, you will doubtless have greater facility in reaching minority stockholders than anyone else who could assist us in that matter."

I asked you, and I believe you admitted, that that statement was true; that you had negotiated the sale of the property of the New Panama Canal Company to the Government of the United States. Is that right?

Mr. CROMWELL. That is not correct, Senator.

Senator MORGAN. Well, state it correctly.

Mr. CROMWELL. You have not stated it correctly, sir.

Senator MORGAN. I say, you state it correctly, then.

Mr. CROMWELL. I have no statement to make, sir.

Senator MORGAN. I demand statement of you—a correct statement. You say I have not stated it correctly. I demand of you, now, on your oath, a statement that is correct of that situation.

Mr. CROMWELL. The statement is true that I was general counsel of the Panama Railroad Company, and the statement is true that, as general counsel of the New Panama Canal Company, I assisted in the transfer of its property to the United States, and the consummation of its offer to the United States.

Senator MORGAN. Mr. Taft says that you "negotiated the sale of the property of the New Panama Canal Company to the Government." Is that correct?

Mr. CROMWELL. I have stated the facts correctly. The Secretary means the——

Senator MORGAN. Is that statement of the Secretary of War correct?

Senator HOPKINS. Mr. Chairman, in court no counsel has a right to exact from a witness whether some other witness has testified correctly or falsely, and the same rule would prevail here. I do not think it is a proper thing to ask Mr. Cromwell to characterize the statement of Secretary Taft.

Senator MORGAN. The Senator is entirely mistaken. I am not viciously characterizing the statement of Secretary Taft or of anybody else.

Senator HOPKINS. But you are asking whether it is true or false.

Senator MORGAN. I want to get a statement as to whether Mr. Taft's statement in that letter to him is a correct statement of the facts.

Senator HOPKINS. I will ask the stenographer to read the question.

(The stenographer read the question, as follows:)

"Senator MORGAN. Mr. Taft says that you 'negotiated the sale of the property of the New Panama Canal Company to the Government.' Is that correct?"

Senator MORGAN. I say, Is that correct?

Senator HOPKINS. Yes. You are asking him to state whether Secretary Taft has testified truthfully or not.

Senator MORGAN. I had no such idea in my mind, and that idea would not enter the mind of anyone but a suspicious man.

Senator HOPKINS. There is no suspicion——

Senator MORGAN. I had no such idea. I want to test the witness's memory, and also his knowledge as to whether that statement is correct.

Senator HOPKINS. But the point, Mr. Senator, is this: You asked him to say as to whether the statement of Secretary Taft is correct or not. Now, if he should say that it was not so, then he would be putting Secretary Taft in the lie, squarely; and one witness can not in any place be called upon to characterize the testimony of another witness. Each must stand on its own merits.

Senator MORGAN. Nothing is further from my mind, Mr. Chairman and gentlemen of the committee, than to cast the slightest reflection upon Secretary Taft in respect of a statement that he has made officially to this witness. In that statement he says: "As you negotiated the sale of the property of the New Panama Canal Company to the Government, and have been general counsel for the Panama Railroad Company, you will doubtless have greater facility in reaching the minority stockholders than anyone else who could assist us in the matter."

I asked him if that part of the statement of Mr. Taft is correct—as to his having negotiated the sale of the property of the New Panama Canal Company to the Government. Secretary Taft could not know that, because he was not in the matter. He was not engaged in the negotiations, and so stated in his testimony. He says that Cromwell did negotiate it. I asked him if that is a correct statement of the facts. Did you negotiate this sale?

Senator HOPKINS. You are predicating your question upon a statement made by Secretary Taft before the committee, are you not?

Senator MORGAN. Upon a statement made by Secretary Taft in this letter to Mr. Cromwell.

Senator HOPKINS. Which the Secretary made a part of his testimony?

Senator MORGAN. No; the Secretary does not make it a part of his testimony. Mr. Cromwell makes it a part of his testimony. He brings it forward.

Mr. CROMWELL. It is a letter of the Secretary addressed to me.

Senator MORGAN. Yes. Mr. Cromwell brings it forward, and I ask him, in explanation——

Mr. CROMWELL. But the letter is the same, no matter who brings it forward.

Senator HOPKINS. The way that question is put it is a clear question of characterizing the statement of Secretary Taft. The question itself is predicated upon an alleged statement of the Secretary, and then the witness is asked, in substance: Is that statement true or false?

Senator MORGAN. I have disclaimed any intention of that sort. There is no intention of that sort implied from my language. I am in the pursuit of a fact that the witness knows, and that Mr. Taft does not know, and has shown in his testimony that he does not know; and I want the testimony of this witness as to whether or not he did negotiate that sale.

Senator HOPKINS. But, Senator, can you not get that in some other way, without bringing Secretary Taft in?

Senator MORGAN. I am not here for the purpose of molding my words to suit Secretary Taft or the Senator from Illinois.

Senator HOPKINS. Very well, then——

Senator MORGAN. I am here for the purpose of putting my words in shape to extract from the witness statements of fact.

Senator HOPKINS. Well, I made my suggestion in the utmost good faith and friendship to the Senator from Alabama. If he resents that suggestion, I shall insist upon my objection, because one witness is not brought here for the purpose of characterizing statements of another.

Senator MORGAN. He is not brought here for that purpose. He brought himself here with this letter and put it before this committee, and I ask him, in explanation of it, as to whether Secretary Taft is correct in his opinion, or judgment, or whatever it may be, that he did actually negotiate the sale.

Senator HOPKINS. I will ask the stenographer to read the question again.

(The stenographer repeated the pending question as follows:)

"Senator MORGAN. Mr. Taft says that you 'negotiated the sale of the property of the New Panama Canal Company to the Government.' Is that correct?"

Senator HOPKINS. Is that correct? Is that statement of Secretary Taft's correct? That is the question.

Senator MORGAN. Shall I put it "Is that true?"

Senator HOPKINS. Well, I can not put your questions for you.

Senator MORGAN. Or "Is not that a fact?" Did you negotiate the sale? I will put it in any form that will suit the delicate sensibilities of the Senator. I will put it in any form he thinks——

Senator HOPKINS. The Senator's delicate sensibilities are not aroused, so far as he is concerned, on anything. All I want is that

if the examination proceeds it shall proceed in accordance with well-established rules of evidence. That is all I ask. I am not going to throw any obstacles in the way.

Senator KITTREDGE. It seems to me that with the Senator's disclaimer of reference to the Secretary there can not be any objection to the form of the question.

Senator HOPKINS. The disclaimer does not affect the question. If the Senator did not mean what his question imports, he should put a question that does express his meaning. You can not adhere to a question and say that you do not intend what your question imports. The only way to correct that is to withdraw the question and put one that does convey the proper meaning.

Senator KITTREDGE. As I understand the purpose of the question, it is to ascertain the fact as to whether or not this witness did negotiate the sale of this property to the United States Government.

Senator MORGAN. That is all. That is the object of putting the question. Now, Mr. Cromwell, will you answer that question?

Senator HOPKINS. I object to the question in that form, for the reasons assigned.

The CHAIRMAN. The Chair, of course, is not a lawyer, but the Chair can not see any impropriety in the question and can not see why there should be any objection to the witness answering it.

Senator MORGAN. If that is the ruling of the committee, the witness will answer the question.

Mr. CROMWELL. I think Secretary Taft uses the expression in a broad and general sense. I so interpreted it, for the facts are matter of record that the New Panama Canal Company made an offer on January 9–11 to the Isthmian Canal Commission to accept $40,000,000, the figure at which the property had been valued by the Isthmian Canal Commission.

Senator MORGAN. Do you propose to recall or modify the statement you made before this committee on your last examination in regard to this same subject in any respect?

Mr. CROMWELL. As to what feature, sir?

Senator MORGAN. As to the subject of the negotiations that you assisted in conducting in part and conducted entirely in part, as you have stated it, for the sale of this property to the United States?

Mr. CROMWELL. The testimony does not so read, Senator.

Senator MORGAN. Well, I will stand on the record about that.

Mr. CROMWELL. I am willing to stand there, too.

Senator MORGAN. Do you make any modification of your statement as the record shows it?

Mr. CROMWELL. I do not care to make any modification. I merely make the statement that the record shows, and as the fact is, that professionally I assisted in the completion and consummation of the offer thus made. In all respects I acted in behalf of the New Panama Canal Company and at no time and in no manner acted for or on behalf of the United States.

Senator MORGAN. You, then, do not find it necessary to make any change in any statement that is recorded as a part of your testimony on this subject?

Mr. CROMWELL. I have not refreshed my recollection by reading it, and I do not know, therefore, any occasion to change it.

Senator MORGAN. Mr. Chairman, I will now introduce a letter from the Secretary of State, with accompanying documents, which I will read to the committee, with your permission. I had written three letters, and this is the answer to the third one, to the Department of State to get a record that the witness mentioned of a power of attorney, of a letter from the Panama Canal Company to the Government—I forget how it was addressed, whether to Mr. Hay, to the President, or to whom; and in reply, on May 2, 1906, Mr. Root says:

"MY DEAR SENATOR: Your letter of April 14, 24, and May 1 have just been brought to my personal attention. They have not, however, been neglected, for Mr. Bacon has been in telephonic communication with your secretary on the subject, and is to-day sending the papers you desire, with the exception of three, which he finds were printed in Senate Document No. 34, Fifty-seventh Congress, second session.

"With great respect and esteem, I am always,

"Faithfully, yours,

"ELIHU ROOT.

"Hon. JOHN T. MORGAN,
"*United States Senate.*"

DEPARTMENT OF STATE,
Washington, May 2, 1906.

Hon. JOHN T. MORGAN,
United States Senate.

SIR: Referring to the personal letter addressed to you to-day by Secretary Root, I have the honer to transmit herewith the papers requested in your letter of the 14th ultimo, as listed below:

Mr. Hutin to Mr. Hay, March 23, 1900.

Note handed to Mr. Hay by Mr. Hutin on March 24, 1900.

Extract from records of the minutes of the proceedings of the board of directors of the New Panama Canal Company, November 21, 1903.

Senate Document No. 34, Fifty-seventh Congress, second session.

I have the honor to be, sir, your obedient servant,

ROBERT BACON,
Acting Secretary.

Inclosures as above.

Senator KITTREDGE. What were those three documents?

Senator MORGAN. They are here, in Document No. 34.

Senator HOPKINS. Are those documents that have already been printed and are before us?

Senator MORGAN. Some of the documents we have had before us and some, I think, we have not. I am not quite sure about that, for I have not examined it with reference to that [continuing reading]:

"General bases with powers of consummation to Mr. Cromwell. New Panama Canal Company. Extract from the record of the minutes of the proceedings of the board of directors. Meeting of October 31, 1903.

"Left (at the Department) by Mr. William Nelson Cromwell November 21, 1903.

"English translation. New Panama Canal Company. Joint stock company, capital 65 millions. Principal office: Rue Louis le Grand No. 7.

"Extract from the record of the minutes of the proceedings of the board of directors. Meeting of October 31, 1903.

"Present: Messrs. Bô, president; Monvoisin, vice-president; Terrier, vice-president; Georges Martin, secretary; Bourgois, director; Couvreux, director; Forot, director; Gueydan, director; Rischmann, director; Samper, delegate of the Colombian Government.

"M. Gauton, liquidator of the Compagnie Universelle du Canal Interoceanique, was present at the meeting.

* * * * * * *

"Mr. Cromwell, counsel of the company in the United States, has come to Paris to consider with the board of directors the measures which there may be occasion to take at this time on account of the delay of the ratification of the Hay-Herran treaty on the part of Colombia. He proposed to prepare a draft contract which should be submitted to the President of the United States, and which would involve the continuance of the arrangements in force. This draft has been examined by M. Waldeck-Rousseau, and its text has been fixed in the following terms:

"'General bases proposed by Mr. Cromwell for an understanding between the President of the United States and the new company with a view to reaching the performance of the existing contract of March 3, 1903.

"'Considering:

"'1. The offer made by the new company, through President Bo, on January 9 and 11, 1902;

"'2. The acceptance by the President of the United States, through Attorney-General Knox, on the date of February 17, 1903;

"'3. The agreement and confirmation of the new company, through Mr. Cromwell, its general counsel in America, under date of March 3, 1903; and

"'4. The treaty of January 22, 1903;

"'It is recognized that since the said date of March 3, 1903, the Senate of the United States has duly ratified the said treaty, but that this treaty is still pending in Colombia, awaiting ratification or some other decision; and that by reason of the foregoing (*and of various other important circumstances*) it is mutually desirable that certain details of the existing contract should be now settled.

"'Consequently:

"'I. It is mutually recognized that the ratification of the said treaty, in the form in which it is now pending, at a date anterior to March 4, 1905, is by the parties accepted as being in conformity with the offer, the acceptance, and the confirmation above mentioned. *This provision shall apply also to the conclusion of a treaty under another form or in any way which may be satisfactory to the United States, and which maintains, without modification, the provisions of articles 1 and 22 of the pending treaty.* It is understood that in any

case the term above mentioned may be prolonged by mutual consent of the parties, should occasion arise.

"'II. In the meantime the new company will continue the work of excavation of the canal in a manner in conformity with the plans adopted by the new company and by the Isthmian Canal Commission.

"'III. This work of excavation shall be carried on under the inspection of a special commission, which shall be appointed by the President of the United States, to which commission the new company shall grant the fullest liberty and facilities for inspection, examination, and information, in order that if the United States carry out the purchase they may be in a position to continue the work themselves without delay.

"'IV. The United States shall assume no obligation concerning this work of excavation and expenditure unless the proposed purchase be carried out by them, and in that case their obligation shall be only that provided in the following article.

"'V. In case of carrying out the proposed purchase all questions of every nature, as well as facts as of law relative to the claims of the new company for reimbursement for expenditures made by it after the work included in the estimate of the report of the Isthmian Canal Commission of November, 1901, *shall be submitted to the judgment and final decision of the President of the United States as sole arbiter.*'

"This draft is unanimously adopted by the members present at the meeting. M. Gautron states that he also gives his approval.

"Full powers are given to Mr. Cromwell to allow him to proceed with the President of the United States in the performance of this proposal.

"The meeting adjourned at 4 o'clock.

"Certified as agreeing with the record of the proceedings.

"The president of the board of directors:

"M. Bô.

"The secretary-general:

"ED. M. LAMPRE."

[Translation.]

[New Company of the Panama Canal, 7 Rue Louis le Grand, Paris. Telegraphic address: Panonovo.]

WASHINGTON, D. C., *March 23, 1900.*

Mr. SECRETARY OF STATE: I should be very grateful if you would kindly do me the honor to grant me an audience on to-morrow, March 24.

Be pleased to accept, Mr. Secretary of State, the assurances of my high consideration and devoted sentiments, together with my anticipated thanks.

M. HUTIN.

Hon. JOHN HAY,
Secretary of State, Washington, D. C.

[New Company of the Panama Canal. Main office, 7 Rue Louis le Grand, Paris.]

Note handed to Mr. John Hay, Secretary of State of the United States, at Washington, March 24, 1900.

The technical commission appointed by President McKinley, in pursuance of the resolution of Congress of March 3, 1899, and presided over by Admiral Walker, will shortly be back in the United States, after examining on the spot the various routes suggested for the opening of a maritime way between the Atlantic and Pacific oceans.

The Commission has gathered a large number of investigation documents that have been critically examined, probed, and completed by the personal observations of its members. It has now to draw up its report and formulate its conclusion.

It must be confessed that whatever be the light in which it is examined, whatever the point of view from which it is considered, the problem of the interoceanic canal is an extremely complex question. Its true solution can only be found by seeking it with an impartial mind and independent intellect.

It is permissible, however, to say truthfully that the manifold questions raised by the problem, in both the technical and economical order, have often been discussed under the influence of traditions and prejudices that progress and time have been so far unable to eradicate.

It would not be proper, on the other hand, to lay any stress here on the action and importance of the private interests which have in different quarters been involved in this considerable undertaking. We trust we may simply observe that they are worthy of consideration.

By the natural preponderance of certain national rights and interests the supremacy of international interests must necessarily be borne in mind if the realization and the future of so great a work are to be insured.

Such are the general principles upon which the course followed by the new company of the Panama Canal was mapped out. In order to demonstrate this, it will be sufficient to recall the written and oral communications of the authorized representatives of the company to the President of the United States and to the Secretary of State in the months of November and December, 1898; the written statements handed to the Rivers and Harbors Committee of the House of Representatives and to the President of the United States on the 27th and 28th of February, 1899, and, lastly, the replies made to Admiral Walker, president of the Isthmian Canal Commission, which are set forth in the stenographic report of the last two sittings held at Paris by the said Commission.

In this convention two remarks will find their place here.

The first relates to the crisis which broke out in January, 1900, in the management of the new company of the Panama Canal. It has been alleged, in the furtherance of certain interests, that the declaration made in the United States in 1898 and 1899 by the board of directors of the company had not received the approval of a large group of parties in interest. This is absolutely erroneous. The truth is that, for reasons which can not be usefully recited here, there arose

a conflict of powers. This conflict is now adjusted under conditions satisfactory to all parties.

The second remark bears upon the incorporation, under date of September 27, 1899, of a society styled "Panama Canal Company of America," under the laws of the State of New Jersey.

It is unnecessary for us to say that the new company of the Panama Canal being, through its public declarations, in honor bound to reincorporate under certain conditions in accordance with the laws of any one of the States of the Union, will not fail, under any circumstances, to discharge that obligation.

But it is obviously important that the freedom of action not only of the new company, *but also that of the Government of the United States itself*, be reserved until such reincorporation shall be deemed expedient or becomes necessary.

This is why we hasten to declare that the Panama Canal Company of America holds no contract and has no legal tie with the new company of the Panama Canal.

As we observed at the outset, the Commission presided over by Admiral Walker has completed the first part of its labors.

We feel sure that it will concede that the new company of the Panama Canal did all that was in its power to facilitate its work.

We placed at its disposal, both at Paris and on the Isthmus, all the archives, all the documents that we had in our possession. We have laid before it as long and complete statements as its members may have desired of our technical plans as a whole, of our economical and statistical investigations, and, finally, of the general condition of our company.

We believe that our duty was thus fulfilled. We therefore venture respectfully to express our confidence that the Congress of the United States will not legislate and the Government will not come to a decision upon the question of the interoceanic canal until the report of the Commission shall have been filed.

In conclusion, we still have to consider the new situation created by the signing of the convention of February 5, 1900, between the United States and Great Britain.

The effect of article 1 of the said convention is to reserve the final form to be given to the solution of the financial questions connected with the execution of the interoceanic canal.

The new company of the Panama Canal will necessarily be called upon to look into these questions at no very distant time. It will address such communications as may be appropriate on this point to the Government of the United States.

M. HUTIN,
President and General Director.

Is that the paper that you delivered to the Secretary of State?

Mr. CROMWELL. I only delivered the first of the papers you have read. I did not deliver the others. The first of the papers, which you read and to which I now refer, are the resolutions of the board of directors of the New Panama Canal Company. The other letters and correspondence, to which you refer, I did not deliver, nor was I a party to it.

Senator MORGAN. Do you know who did deliver it?

Mr. CROMWELL. I do not; no, sir.

Senator MORGAN. Or when it was delivered?

Mr. CROMWELL. No, sir.

Senator MORGAN. Was it delivered without consultation with you?

Mr. CROMWELL. It was.

Senator MORGAN. And yet you were general counsel in the United States?

Mr. CROMWELL. I was.

Senator MORGAN. You speak of the translation of the letter of Monsieur Hutin?

Mr. CROMWELL. I was speaking of the resolution, Senator, and I was also saying that the letter signed "M. Hutin, president and general manager," was written by himself and, I presume, delivered at his instance.

Senator MORGAN. How do you know it was written by himself?

Mr. CROMWELL. I presume so from his signature.

Senator MORGAN. You do not know?

Mr. CROMWELL. I do not; no, sir.

Senator MORGAN. Is that the communication referred to in your letter to Mr. Hay, in which you stated that Mr. Bonnardel or M. Hutin, or both, had been delayed on the ocean in consequence of unfavorable weather, and that they would arrive, and that you would go with them to Washington to confer with him about this subject?

Mr. CROMWELL. I do not recollect dates so accurately as that, Senator. Refresh my recollection, please, by referring me to the letter to which you now allude.

Senator MORGAN. Well, it is here in the record.

Mr. CROMWELL. Let us find it, then.

Senator MORGAN. You have read it many a time. It has been published four or five times in Senate documents. You remember the letter that you wrote to Mr. Hay, about which I inquired, and which you refused to answer certain questions about.

Mr. CROMWELL. What was the date of that letter, Senator?

Senator MORGAN. The date of that letter is December 5, 1898.

Mr. CROMWELL. How could it possibly have any connection with a letter written in 1903?

Senator MORGAN. I did not say it had any connection with that letter. If you thought I did, the question has been misunderstood.

(By request, the stenographer read the question referred to, as follows:)

"Senator MORGAN. Is that the communication referred to in your letter to Mr. Hay in which you stated that Mr. Bonnardel or Mr. Hutin, or both, had been delayed on the ocean in consequence of unfavorable weather, and that they would arrive, and that you would go with them to confer with him about this subject?"

Mr. CROMWELL. As you have now furnished me the date of the letter as being in 1898, it is self-evident that it could not refer to the communications that you have to-day submitted, bearing date in 1903, five years later.

Senator MORGAN. It related to some other letter, then, and not to that. You were not the counsel of this company in 1903—the Panama Canal Company?

Mr. CROMWELL. I was.

Senator MORGAN. In 1903?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. When did you first become its counsel?

Mr. CROMWELL. In 1896, as I have testified, Senator, several times.

Senator MORGAN. In 1896 you first became its counsel?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. And you delivered this paper to Secretary Hay at the request of whom?

Mr. CROMWELL. For the sake of clarity, please identify the paper. I think you refer to the resolutions, do you not, sir?

Senator MORGAN. I refer to the paper which you said you delivered to him. What was that?

Mr. CROMWELL. That was the series of resolutions of the New Panama Canal Company.

Senator MORGAN. Is this the series of resolutions that you refer to? [Exhibiting paper to the witness.]

Mr. CROMWELL. It is. The paper entitled, "General bases, with powers of consummation," and signed by the president of the board of directors, M. Bô, being an extract of the record of the board of directors of the New Panama Canal Company at its meeting held October 31, 1903.

Senator MORGAN. The other letter in this package that the Secretary of State has sent to me was dated March 23, 1900, from Monsieur Hutin, addressed to Hon. John Hay, Secretary of State, and the inclosure is marked "Note handed to Mr. John Hay, Secretary of State of the United States, at Washington, March 24, 1900." You say that you had no connection with the delivery of either of those papers?

Mr. CROMWELL. I did not, sir.

Senator MORGAN. But you did deliver this one?

Mr. CROMWELL. I delivered the resolutions; yes, sir; in 1903. The two papers you refer to are separated by three years in point of time, or three years and a half.

Senator MORGAN. State the conversation that took place between you and Secretary Hay at the time that you delivered that paper to him.

Mr. CROMWELL. Oh, I have no recollection of that, except that I filed with him the power which I brought from Paris. I have no recollection of the interview, except the mere fact that I filed the paper with him.

Senator MORGAN. You speak of a power that you brought from Paris?

Mr. CROMWELL. This power.

Senator MORGAN. This power?

Mr. CROMWELL. The power conveyed by that resolution.

Senator MORGAN. You had been to Paris, and this power was handed to you, I suppose, and you came back here and delivered it to Mr. Hay?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. Did you make any explanation or statement to him at that time?

Mr. CROMWELL. I do not recollect, Senator.

Senator MORGAN. You have no recollection of anything that occurred between you and him?

Mr. CROMWELL. No, sir.

Senator MORGAN. Did you just hand the paper to him and bow yourself out?

Mr. CROMWELL. I do not recollect. I had many interviews with Mr. Hay, and this is but an incident of a thousand transactions. I have no recollection of interviews.

Senator MORGAN. In regard to this particular transaction, have you had many interviews with him?

Mr. CROMWELL. I have had several.

Senator MORGAN. Do you recollect what you said to him on any of those occasions?

Mr. CROMWELL. I do not identify any particular topic, and I do not, therefore, identify the conversation.

Senator MORGAN. You then swear that you have no recollection, if I understand you, of the substance even of the conversations you had with Mr. Hay at the time you delivered this paper, or at the various other conferences you had with him on this subject?

Mr. CROMWELL. I do not identify conversations, Senator, without some topic to bring them to my memory.

Senator MORGAN. The topic is the proposition to transfer the property of the Panama Canal Company to the United States in some form, either through a syndicate or a corporation, or by a sale or in some form.

Mr. CROMWELL. That was not the proposition of the resolutions that you have read.

Senator MORGAN. What was the proposition that you submitted to Mr. Hay?

Mr. CROMWELL. As embodied in that resolution only.

Senator MORGAN. Only that?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. Was this proposition in any form accepted either by the President of the United States or by Mr. Hay?

Mr. CROMWELL. The resolutions to which you refer empowered me, as they state, to agree with the President of the United States upon his appointment as sole arbitrator in respect of the account for reimbursement to the New Panama Canal Company for the construction work which it had carried on from the time of the estimate of the Isthmian Canal Commission and was then carrying on and did carry on down to the hour of the sale, to the amount of $2,000,000 actually expended and certified to. It was pursuant to those resolutions, Senator, that the arbitration agreement embodied in my letter to the Attorney-General of March 9, 1904, and the official acceptance of the same by the Attorney-General, acting through Messrs. Day and Russell, at Paris, April 16, 1904, was established.

Senator MORGAN. Did either the President or Mr. Hay agree to any other of the terms and stipulations contained in what you call these resolutions?

Mr. CROMWELL. May I refresh my recollection?

Senator MORGAN. Yes [handing papers to the witness].

Mr. CROMWELL. Yes, sir. In effect the New Panama Canal Company accepted the ratification of the treaty between the United States and Panama as compliance with the formal acceptance of the President, which had been made subject to ratification of the then pending Hay-Herran treaty. It was because of the delay in the rati-

fication of the Hay-Herran treaty, and the consequent necessity of deferring consummation of the transaction that these resolutions were given to me for the purpose of making with the President the requisite arrangements upon these points.

Senator MORGAN. Did you have any authority from the Government of Colombia for making that proposition to the President of the United States?

Mr. CROMWELL. Not the remotest. I had no connection with the Government of Colombia.

Senator MORGAN. You were, then, dealing with the property of the Government of Colombia and its rights without ever having consulted it?

Mr. CROMWELL. I was not dealing with the property of the Government of Colombia nor with its rights.

Senator MORGAN. With what?

Mr. CROMWELL. They were the property of the New Panama Canal Company and its rights, which were the subject of transfer.

Senator MORGAN. Did not the Government of Colombia have reversionary rights under the concessions?

Mr. CROMWELL. It did at that time, and that is the reason the Hay-Herran treaty was negotiated, by which, if they ratified the treaty, they would have surrendered those rights.

Senator MORGAN. In that treaty, then, Colombia did agree to surrender her rights?

Mr. CROMWELL. She did.

Senator MORGAN. And you assisted in that negotiation?

Mr. CROMWELL. I did. I will not say negotiation, but in that topic; yes.

Senator MORGAN. Well, the negotiation. Were you actively assistant in the negotiation of the Hay-Herran treaty?

Mr. CROMWELL. I was.

Senator MORGAN. Had you been actively assistant in the previous negotiation of the Concha and Hay treaty?

Mr. CROMWELL. I was; both of which embodied the requisite consent of Colombia to the transfer. That was my motive and purpose in my participation.

Senator MORGAN. Had you been, previously to that, actively engaged in getting the consent of Colombia to go into this arrangement?

Mr. CROMWELL. Through its successive ministers here, I had—Minister Silva, Minister Concha, and Minister Herran.

Senator MORGAN. Did you have any correspondence with Colombia through diplomatic agents or attorneys or any other persons on the subject of their agreeing to the disposal of the rights under the concessions to the United States that are mentioned in this paper?

Mr. CROMWELL. No, sir.

Senator MORGAN. You had had no such?

Mr. CROMWELL. None whatever, Senator. My duties were solely with their successive ministers here in Washington, to endeavor to secure their consent to the transfer of the concession from the New Panama Canal Company to the United States.

Senator MORGAN. Did the Colombian ministers Concha and Herran or Silva, any of them, invite your assistance as a negotiator with the United States in these matters?

Mr. CROMWELL. My part in the affair was in representation of the New Panama Canal Company, to endeavor to secure their consent, a requisite feature of the transfer. In that work I succeeded.

Senator MORGAN. Did they invite you to participate? Did any of these ministers invite you to participate in the negotiations with the United States Government?

Mr. CROMWELL. My position was not one of invitation. I needed none. I represented a party.

Senator MORGAN. Did they invite you?

Mr. CROMWELL. No, sir. There was no occasion to. The New Panama Canal Company was a third party to the transaction.

Senator MORGAN. It was a third party to the transaction? Was it a party to the negotiation?

Mr. CROMWELL. It was a party to any transaction.

Senator MORGAN. Well, the negotiation was a part of the transaction, was it not?

Mr. CROMWELL. You will have to characterize it in your own way, Senator. I have stated the fact.

Senator MORGAN. I will ask you directly: Was the negotiation a part of the transaction of this business?

Mr. CROMWELL. The procurement of the consent of Colombia was a necessary feature of any transaction between the United States and the New Panama Canal Company, and any consummation that was offered; and for that reason I addressed myself to it with proper attentiveness, and succeeded in procuring the consent of both Minister Concha and Minister Herran, as embodied in the two draft treaties, signed by both, which have been presented to the Senate in one form or another.

Senator MORGAN. Yes. They are in the record here, and I propose to examine you about those treaties when we get down to that branch of the subject. As a predicate for all of this work that you were doing here as a negotiator and as representing a third party in a diplomatic affair, which was only a private corporation, it was necessary first of all, was it not, to obtain a prolongation of the concession of Colombia from 1904 to 1910 made to the Panama Canal Company?

Mr. CROMWELL. I think that had been granted, Senator.

Senator MORGAN. But it was a necessary predicate?

Mr. CROMWELL. Let us get the dates. I do not assent to the form of your previous question.

Senator MORGAN. I am not asking you to assent to it.

Mr. CROMWELL. I do not adopt the form of the question, nor accede to the statement contained in your last two or three questions.

Senator MORGAN. Did you have anything to do whatever about obtaining the prolongation of that concession from 1904 to 1910?

Mr. CROMWELL. If I did, it was in my relations to the canal company as their counsel, and is privileged.

Senator MORGAN. And is privileged?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. And you refuse to answer the question?

Mr. CROMWELL. For that reason, Senator, I do. I will state to the committee that I have entire respect for its procedure, and I have no wish to indicate that my refusal is of an arbitrary or unreasonable character.

Senator MORGAN. You need make no apologies to me about answering questions. You may answer or refuse to answer, as you think best.

Mr. CROMWELL. There is a principle involved, and I want the committee to understand, when I make that refusal, that it is not with disrespect to the committee or to the Senate. There is a principle involved.

Senator MORGAN. I object to putting this explanation on the record. It is not in reply to anything that I have asked, and I ask that it be stricken out.

Senator DRYDEN. I think the witness has a right to make his explanation.

Senator MORGAN. He has no right to do it unless it is in reply to some question. I have not asked him any question——

Senator DRYDEN. This is a statement that the witness is making to the committee.

Senator MORGAN. That may be; and if he is going to take the examination out of my hands, and the committee wants him to do it, let him go ahead.

Senator DRYDEN. I assume that the committee has a right to hear the statement that the witness wishes to address to the committee as a committee.

Senator MORGAN. I shall not object to that, if Mr. Cromwell takes the floor and wants to make a statement to this committee. I shall not object to that, but I object to it as a reply to my question. It is not a reply to any question that I have asked.

You knew, Mr. Cromwell, that the success of the Panama Canal Company in complying with their promise to complete that canal depended upon getting a prolongation of the concessions from Colombia?

Mr. CROMWELL. I respectfully decline to state, for the same reason, Senator. The affairs of my client are of no concern whatever to this inquiry, nor the attitude in which it would have been placed at that time, or anything concerning its conduct at that time.

Senator MORGAN. You knew, outside of your relations to the Panama Canal Company, or in some way, that the success of that company depended upon obtaining a prolongation of that concession?

Mr. CROMWELL. I do not know such to be the fact.

Senator MORGAN. You did not know it?

Mr. CROMWELL. I do not know such to be the fact.

Senator MORGAN. I will now read from the minutes of the railroad company. [Reading:]

"Minutes of a meeting of the executive and finance committee of the Panama Railroad Company, held at the office, No. 29 Broadway, New York City, on Friday, May 6, 1898, at 3 p. m.

"Transfer to Panama Railroad Company of lands at Panama and La Boca belonging to the New Panama Canal Company. Mr. Whaley and Mr. Cromwell reported their recent conference with the director-general of the canal company on this subject. Upon motion, duly seconded, it was unanimously

"*Resolved*, That this company enter into a contract with the New Panama Canal Company whereby the canal company will sell and convey to this corporation such lands at the La Boca terminal as

the canal company has heretofore acquired through purchase, and also, but subject to the terms and provisions of the canal company, to grant to this corporation the use of such lands, at such terminals as are covered by its concession, for the total sum of $20,000, payable in installments of $2,000 per annum; with the proviso that in the event that the canal company's concessions should not be extended beyond 1904, then the total consideration price be reduced to $14,000. Also, that a full, adequate grant to this company of the use of the La Boca Branch Railroad be executed and exchanged between the canal company and this corporation, pursuant to the provisions of the contract of February 12, 1897, and subject to the terms and provisions of the concession of the canal company.

"*Further resolved*, That general counsel is hereby directed to prepare the documents covering the foregoing subjects, for submission to the canal company as the other party thereto, and that upon agreement upon the same the executive officers of this company be, and are hereby, authorized to execute the same."

So at that time, when you were present at the meeting of the executive committee, you did know that the canal company was trying to get an extension from 1904 to 1910 of the concessions, and that it was a matter of extreme doubt as to whether they would get it; and you also knew, and predicated this contract upon it, that these privileges that you were instructed to buy from the Panama Canal Company would be paid $20,000 for, with a proviso that in the event that the canal company concessions should not be extended beyond 1904 then that the total consideration price be reduced to $14,000. You knew all that?

Mr. CROMWELL. I did not know it in the way you have stated it. You have not stated it correctly.

Senator MORGAN. I read it from the minutes. I took it from the minutes, and I object to any statement of it except what is on the minutes.

Mr. CROMWELL. You have not stated it correctly.

Senator MORGAN. Very good.

Mr. CROMWELL. The minutes you have read, compared with the stenographic notes of what you have said, will not agree; but this is the fact, Senator, and it is very simply said——

Senator MORGAN. I have no objection to your making any explanation you want to make of any transaction you are willing to enter into. My objection to your testimony is that you will not tell what you know about things you do not choose to talk about.

Mr. CROMWELL. I knew, and everybody knew who had any interest whatever in the subject, that the concession of the Panama Canal Company expired by its limitation in 1904, although there were very substantial rights that might even survive its termination. It was also known that the company was seeking a prolongation of that concession up to 1910.

Now, the transaction which you have quoted from the minutes of May 6, 1898, records the businesslike transaction by which the railway company acquired from the canal company certain property covered by the canal concession for the agreed sum of $20,000; but, with proper business caution, the board of directors took into consideration the possibility, perhaps the bare possibility, of the canal concession not being prolonged, in which event the lands which

were to be thus acquired, and which were themselves subject to the canal concession, would be to the railroad company of less value if the concession should terminate at an earlier period, and therefore they very cautiously and properly provided that in that event the consideration price should be reduced from $20,000 to $14,000. That transaction is as plain as a pikestaff; but, with great respect, Senator, it does not sustain the question which you addressed to me, which I will ask the stenographer to read.

(The stenographer read as follows:)

"Senator MORGAN. You knew outside of your relations to the Panama Canal Company, or in some way, that the success of that company depended upon obtaining a prolongation of that concession?"

Mr. CROMWELL (continuing). I say that the resolution you have read has no relation whatever to the question you addressed to me and no support or bearing to it. The affairs and interests of the New Panama Canal Company had a thousand other conditions and resources. The little item of property to which you refer has not the slightest bearing upon its ability to complete the canal.

Senator MORGAN. That last remark, Mr. Witness, is your commentary upon the situation and is not in answer to any question at all that I am aware of having propounded to you. You say it has no relevancy at all to the matter in hand, to the question whether you knew and whether it was a fact that this bargain was going on, or if the effort was going on to try to get the prolongation or extension of the concession, and that if it did not succeed in it it would reduce the value of what you were trying to buy from the New Panama Canal Company from $20,000 to $14,000.

Mr. CROMWELL. It would, and obviously would.

Senator MORGAN. Now, if you will just explain how obviously it would I shall be obliged.

Mr. CROMWELL. Because, sir, if the prolongation were made, then the railroad company would have a longer period of use of the land in question, and if the prolongation were not made it would have a shorter term; and the difference regulated the consideration.

Senator MORGAN. Why would it have a shorter term if the prolongation was not made?

Mr. CROMWELL. Because the concession would terminate, and if the concession terminated the lands which were the subject of these resolutions might revert to Colombia under the terms of the concession.

Senator MORGAN. You proposed on that occasion and in that resolution to buy all of the interests of the canal company in the La Boca terminals?

Mr. CROMWELL. Not at all.

Senator MORGAN. What were you proposing to buy?

Mr. CROMWELL. The resolution does not so state.

Senator MORGAN. What were you proposing to buy? Explain it.

Mr. CROMWELL. Let the resolutions explain themselves, Senator. I have no memory of it. The La Boca terminals, Senator, referred to in the previous testimony here, represent an immense terminal affair, disconnected, in part, from the land. The chief item in that subject was the construction of a tremendous iron pier, a thousand feet long, I think—I will get the figures for you if you wish—and, indeed,

the finest pier on the South American Continent. That was the main feature of the La Boca terminals. The lands, Senator, referred to in this resolution are but a small affair, touching the shore. I do not know precisely where they are located. I have no distinct memory about the transaction; but that is the substance of it.

Senator MORGAN. Well, the La Boca terminal, with the long pier that you spoke of and the ditch that they dug from that pier down to Naos Island, so as to admit large-sized steamers up to the pier, was the main feature of the transaction?

Mr. CROMWELL. That was the main feature of the La Boca transaction; yes, sir.

Senator MORGAN. You had already bought that from the canal company?

Mr. CROMWELL. I do not recollect when, Senator.

Senator MORGAN. You were then at work on it?

Mr. CROMWELL. That was eight years ago. I can refresh my recollection, if you think it is important, and will do so with great pleasure.

Senator MORGAN. And this land you speak of was some parcels or scraps of land that lay around in that neighborhood?

Mr. CROMWELL. Lands in that neighborhood; but I can not describe the lands. I can not describe their condition.

Senator MORGAN. They were sufficient in quantity to be esteemed as being worth $20,000?

Mr. CROMWELL. Yes, sir; they were in one contingency, and $14,000 in another contingency.

Senator MORGAN. You had not as yet obtained those lands from the canal company?

Mr. CROMWELL. I do not know, Senator, anything about the transactions from memory save that which is recorded in the minutes.

Senator MORGAN. I want to refresh your memory about it.

Mr. CROMWELL. If it is important, I can have the officers of the company——

Senator MORGAN. It is an important connecting link in a chain of evidence that I want to establish.

Mr. CROMWELL. I shall be happy to furnish any data within my power, and a description of the lands, and particulars of the lands, if you would like it.

Senator MORGAN. At the time your railroad company was negotiating with the canal company to get these parcels of land that lay around and about the La Boca pier this question of the prolongation of the concession from 1904 to 1910 had not been settled; it was in doubt?

Mr. CROMWELL. I think not, sir.

Senator MORGAN. You think it had been settled?

Mr. CROMWELL. I think not.

Senator MORGAN. You think it had not been settled?

Mr. CROMWELL. I think it had not been settled.

Senator MORGAN. It was still in doubt?

Mr. CROMWELL. It had not been made.

Senator MORGAN. You may recall—the record shows it—that San Clemente signed that prolongation of the concession as President of Colombia in April, 1900.

Mr. CROMWELL. Yes, sir.

Senator MORGAN. And this was dated——

Mr. CROMWELL. May, 1898.

Senator MORGAN. This proceeding?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. It was at a time, then, contemporaneous with the letters that you wrote Mr. Hay, practically contemporaneous with that correspondence, December 5, 1898?

Mr. CROMWELL. What was the date of that correspondence, Senator?

Senator MORGAN. The first letter we have in the evidence is December 5, 1898.

Mr. CROMWELL. The minutes to which you refer are of May, 1898; so that they do not seem to have any relation to each other.

Senator MORGAN. Well, in May, 1898, then.

Mr. CROMWELL. The letters to which you refer were six months after.

Senator MORGAN. And even as far back as May, 1898, this question of obtaining the prolongation of this concession from 1904 to 1910 was a matter of doubt?

Mr. CROMWELL. I do not say it was a matter of doubt. I say it was under consideration.

Senator MORGAN. Well, you seem to have made it so much a matter of doubt that you reduced the price of the property from $20,000 to $14,000 in the event that it did not succeed.

Mr. CROMWELL. We did not reduce the price, but provided for the contingency.

Senator MORGAN. That is, the contingency reduced the price?

Mr. CROMWELL. The contingency was provided for as a matter of proper business caution.

Senator MORGAN. And proper business caution in that case was predicated upon the railroad company's knowledge of the fact that it was doubtful whether that prolongation could be obtained?

Mr. CROMWELL. I do not agree to the word "doubtful." It was predicated upon the fact that it had not yet been extended.

Senator MORGAN. And that it was uncertain?

Mr. CROMWELL. I do not say it was uncertain.

Senator MORGAN. If it was not doubtful or uncertain, why was the difference between $20,000 and $14,000 put in there?

Mr. CROMWELL. Because, like good business men, the directors provided for the possibilities.

Senator MORGAN. You were forseeing things?

Mr. CROMWELL. That is the duty of a skillful director, to forsee contingent dangers. You would have criticised them, I suppose, if they had not done so.

Senator MORGAN. I am not criticising anybody, but I am trying to get at the facts in this case. That is all that I am trying to do. I think you had a perfect right to make such a transaction as that, but it is our right to know the facts upon which it was predicated.

Mr. CROMWELL. I am happy to furnish them all to you, Senator.

Senator MORGAN. I want to put these papers in evidence, Mr. Chairman. They are the statements made by Mr. Drake and sent to you in reply to a letter that I addressed to you asking for information.

The CHAIRMAN. Are they the papers that I handed to you?

Senator MORGAN. Yes. The same ones.

The CHAIRMAN. Very well.

Senator MORGAN. I want to put these papers in evidence, and I want to ask Mr. Cromwell one or two questions upon them before we close the examination this morning.

In the statement submitted by Mr. Drake, assistant to the president of the Panama Railroad Company at this time, he mentions a payment to Mr. X. Boyard, special agent, in compensation for his services and expenses in connection with his trip to Bogota to obtain the acceptance by the Colombian Government of the company's works at La Boca as a compliance with conditions of article 4 of the contract of concession, namely, services, March 18, 1897, $4,000; November 12, 1897, $800; December 14, 1897, $5,200, making $10,000. Then his disbursements, $1,215.97, making a total of $11,215,97. Then there are payments to J. A. Arango, special agent, for services and expenses to, at, and from Bogota, respecting acceptance of La Boca extension, the details of which I will not read, amounting to $64,-200.39. Then payments to Messrs. Gutierrez & Escobar, attorneys, etc., amounting to $26,069.22, and an additional sum in November, 1903, amounting to $2,434.93, and up to January 6, 1904, $1,000. Then a payment to Mr. A. Mancini, diplomatic agent, salary $1,200 a year, from January 20, 1902, and expenses for cable for the year 1902, $900; 1903, $1,210; quarter ending January 20, 1904, $400; in all, payments to Mr. Mancini, $2,510.

Those are expenses for counsel fees in Colombia, so this memorandum seems to indicate, and for diplomatic services in connection with the Colombian Government by the railroad company that covers this period of which we have been speaking, in which the executive committee of the railroad company passed this resolution in regard to the purchase of these parcels of land connected with the La Boca terminal.

What was the object in keeping this heavily paid diplomatic force in Colombia during the period that I have referred to?

Mr. CROMWELL. By the terms of the railroad concession—I think article 13 of them, speaking from memory—it was provided that the railroad company was obligated to extend its railroad out to deep water in the Bay of Panama. That was a requirement of the railroad concession. For a fixed period it obtained suspension of the enforcement of that provision by paying annually to the Government of Colombia $10,000. When it was decided to establish the La Boca pier and terminal, the company claimed that the extension of the pier and the construction of a channel out to the islands would fulfill the provision of article 13, to which I have alluded, and would be the extension to deep water which was required by the concession.

Up to this time you may know, Senator, that all freight and passengers on the Pacific side were required to be transported from the ship to the shore in lighters, as it was impossible to approach the shore under the conditions of the harbor. The traffic of the Isthmus had undergone this impediment for half a century. It was the broad purpose of the company to overcome this difficulty of nature and establish a pier and channel out to the islands, where there was deep water. This was done and the important undertaking accomplished, which resulted in the expenditure of over $2,000,000. Now, when the pier was publicly opened for traffic, the Colombian authorities dis-

puted the right of the company to utilize this facility without some special agreement with Colombia, disputing that such a constructon was a real extension to deep water in the Bay of Panama.

Senator MORGAN. Who opened that channel?

Mr. CROMWELL. The channel was constructed by the New Panama Canal Company under the contract of construction which has been already referred to, by which they agreed to construct, at cost, without profit to themselves, this channel.

Senator MORGAN. Agreed with whom?

Mr. CROMWELL. With the railroad company, under formal contract.

Senator MORGAN. That was a part of the canal?

Mr. CROMWELL. No, sir; a part of the railroad construction, because without it the railroad could not get to deep water; and under this the canal company constructed——

Senator MORGAN. Well, it was a channel through which the ships would come up from Naos Island to the shore?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. It was a part of the ship channel, then, that was being constructed in conformity with the concessions of the Panama Canal Company?

Mr. CROMWELL. It was a necessary part of the railroad?

Senator MORGAN. And of the canal company?

Mr. CROMWELL. No; that is not correct, for it was owned by the railroad company. The channel was owned by the railroad company. It was constructed, paid for, and owned by the railroad company.

Senator MORGAN. The Panama Canal Company, under its concession, went into the Bay of Panama and dredged a channel for ships to the depth of about how many feet—38 to 40?

Mr. CROMWELL. I do not know, Senator.

Senator MORGAN. Well, deep enough for the largest ships that came in there, and of sufficient width up to La Boca—that is, to the coast—and that was about 3 miles long, or a little over. Did the Panama Canal Company ever dredge or attempt to dredge any channel out to the island of Naos but that?

Mr. CROMWELL. I do not know any of the practical features of it. I know that under the contract with the railroad company it was provided that the canal company should construct the pier and do certain distinct dredging of a basin contiguous to the La Boca terminal. I am speaking now from memory, but that is the substance of it. The contract is on record in the minute books of the company here before the committee, and can be read to make more definite my statement.

Senator MORGAN. This channel was dredged under the charter of the canal company?

Mr. CROMWELL. No, sir; the dredging to which I have referred, or the dredging of the channel part to which I have referred, relates solely to so much as was done under the contract between the New Panama Canal Company and the railroad company, and which is specifically specified in that instrument, to which I beg leave to refer.

Seantor MORGAN. And then the railroad company paid for all of that channel?

Mr. CROMWELL. No, sir; the railroad company paid for only so much as was covered by that particular contract.

Senator MORGAN. And the canal company paid for the balance?

Mr. CROMWELL. I do not know anything about the balance. I am referring to the contract.

Senator MORGAN. You say "No, sir," that the railroad company paid for only that particular part that was covered by their contract. Who paid for the balance of it?

Mr. CROMWELL. I know nothing of the balance nor the consideration of the balance.

Senator MORGAN. Well, that channel is there to-day, and it is the method of access to steamers to come up to that La Boca pier, together with the basin dug around it, in which a ship can be moored off or can be turned around?

Mr. CROMWELL. Yes, sir. That channel, I think, was constructed by the canal company itself, out of its own resources, before this contract was made. That is my general memory of it.

Senator MORGAN. At that time the Panama Canal Company owned all of the stock in the railroad company, and all of the property of the railroad company represented by the stock except about 1,100 and a few odd shares?

Mr. CROMWELL. At that time it owned the specific number of shares that has been specified here; and that was its only ownership, such as represented by shares of stock.

Senator MORGAN. You are speaking technically, now. The ownership of such a majority as that, of——

Mr. CROMWELL. Sixty-eight thousand five hundred and thirty-four shares.

Senator MORGAN. Ninety-nine per cent, or about that; the ownership of such a majority of the stock as that of course carried with it the ownership of everything else, if the stockholders chose to appropriate it?

Mr. CROMWELL. No, sir; I respectfully dissent from that.

Senator MORGAN. We will not discuss any technicality of law in that connection. I want to get at the main facts.

Mr. CROMWELL. If you want to get the main facts you must keep to the law, because that is a fact.

Senator MORGAN. The Panama Canal Company was the main owner of whatever belonged to the railroad company?

Mr. CROMWELL. It was the owner of that number of shares of stock. That was the only ownership it had in the railroad company.

Senator MORGAN. Well, I do not think any sensible man in the world will fail to understand what we both mean.

Mr. CROMWELL. I think they will, sir, because you want some other meaning to be incorporated in my answer than that which is the correct one, to wit: The answer is that the Panama Canal Company owned 68,534 shares in the Panama Railroad Company, and that was its only legal relation to that corporation. Of course that constituted a majority, and would enable them to elect a board of directors, but beyond that it did not control the corporation.

Senator MORGAN. And it was to all intents and purposes the owner of the great body of the property of the railroad company?

Mr. CROMWELL. I do not accept that statement, Senator.

Senator MORGAN. I do not ask you to accept it. I am stating it.

Mr. CROMWELL. I know the legal consequences, and you do.

Senator MORGAN. I am stating it for myself, and not entering into any discussion about it at all.

Whatever work was done there in the opening of this channel up to La Boca pier, and in building the La Boca pier, was the property of the railroad company and the property of the canal company to the extent of the stock that they owned in it?

Mr. CROMWELL. It was the property of the railroad company, and was not the property of the canal company.

Senator MORGAN. Well, call it by some name that will satisfy you, practically, in presenting the true situation. It was the real proprietor of all that belonged to that railroad company there, and was, therefore, the proprietor of the La Boca pier and also of the La Boca channel, leading out to the island of Naos?

Mr. CROMWELL. You are mistaken, Senator. I repeat again that the New Panama Canal Company owned 68,534 shares of stock in the Panama Railroad Company, and that is all the ownership in the Panama Railroad Company that it had. One may make any mathematical deductions from that statement that he pleases.

Senator MORGAN. I am trying to get at the substantial fact, and that the railroad company, in building that pier and in digging that ditch was working for its own interest.

Mr. CROMWELL. You may draw your own deductions, Senator.

Senator MORGAN. I have drawn them that way, and I do not intend to draw them in any other way in reason and common sense.

Mr. CROMWELL. I have no objection to your drawing them in any way you choose, but there is no use in distorting legal principles to form a conclusion.

Senator MORGAN. Why was it necessary that this very heavy bill of expense for diplomatic services should be charged to the railroad?

Mr. CROMWELL. I was interrupted, Senator, by the digression, which I am glad you made, in my explanation upon that point.

Senator MORGAN. Well, go on with your explanation, then.

Mr. CROMWELL. Because of this requirement in the concession of the railroad company the railroad company was legally bound to extend its line of road out to deep water in the Bay of Panama and was obligated to pay $10,000 every year that it did not do it—a fixed charge. When we completed the La Boca pier the Colombian Government protested against the use of that terminal as being a compliance with the concessionary obligation to extend out to deep water, and disputed our proposition that it was such a compliance with article 13, and even spread out the statement to traffic that they would not clear vessels from this new port without some new agreement with them; in short, disputed the proposition that the extension thus made of La Boca pier, reaching deep water, was a compliance with article 13.

In effect, I may say, they argued that it was originally designed that the deep water should be deep water created by nature, and not deep water which should be created by dredging—a technicality, but which, supported by the powerful arm of government, and with the terrific cloud and embarrassment that it would make upon the ships which might be prevented from getting their clearances, made a situation of the most acute and grave character, which had to be dealt with.

It was dealt with by the board of directors, principally under my legal direction, dealt with firmly, strongly, actively, persistently. It occupied us nearly two years—a year or two—before we finally overcame this opposition and got the permit. In the meantime we defied them, and proceeded to use the pier, but with anxieties of a character you can imagine, to satisfy the concern of shippers and all that. To accomplish this we first sent Mr. Boyard, who was a very experienced man, intelligent, and very competent, to La Boca.

Senator MORGAN. And who was then one of the directors in the railroad company?

Mr. CROMWELL. And then one of the directors in the railroad company.

Senator MORGAN. And the agent of the Panama Canal Company in the United States?

Mr. CROMWELL. He was also the gentleman we have described in the testimony before as being the commercial agent of the company, and a man especially acquainted with all the aspects of the question.

Senator MORGAN. Mr. Boyard is dead?

Mr. CROMWELL. Yes, sir; he died in 1904. He went to Bogota, which, as you know, is a very long trip of itself, and occupied himself there several months in the endeavor to overcome this opposition and to procure their formal acceptance of this pier and La Boca terminal as being a compliance with article 13. The items there mentioned, in the papers which you have before you, are for his services and expenses in that regard, and they are very reasonable. But his mission failed, and the situation became even more acute upon the Isthmus by reason of that very failure to secure the consent. Mr. Arango, who had for many years been in the service of the railway company on the Isthmus, and who was a very competent and experienced gentleman of high character, and a member of one of the oldest families of the Isthmus, a man of large moral influence and importance——

Senator MORGAN. And fine family connections?

Mr. CROMWELL. Yes.

Senator MORGAN. Who was he connected with in the Government?

Mr. CROMWELL. What government?

Senator MORGAN. The Government of Colombia.

Mr. CROMWELL. He?

Senator MORGAN. Yes.

Mr. CROMWELL. I do not know that he had any connections with the Government. I do not know any officers of the Government with whom he was connected.

Senator MORGAN. You had better read over your minutes, and you will find out how he was connected.

Mr. CROMWELL. I would be glad to be assisted. I have no memory at present of that, but he was a man of worth and importance, and lives in Panama; and he was assigned and employed, then being in the service of the company, to go to Bogota and to renew and continue the same efforts. He did so, and he was occupied a long time, extending over a long period of effort. He employed attorneys and proceeded actively in the matter, and it resulted finally in the Government appointing a commission at Panama to determine the character of the structure and our claim of compliance with these requirements

of the concession, and a report favorable to the company was delivered, under which, finally, the Government yielded, and gave to us the requisite consent, and the exemption from the payment of $10,000 per annum thereafter, for a lump sum of money—$200,000, I think it was.

Senator MORGAN. You paid them $200,000 in addition?

Mr. CROMWELL. To the Government of Colombia.

Senator MORGAN. I say, you paid the Government of Colombia, in addition, $200,000?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. In addition to all these fees?

Mr. CROMWELL. Yes, sir. The expenses of Mr. Arango are mentioned in this statement you have just seen.

Senator MORGAN. You did all that to get rid of the $10,000 a year?

Mr. CROMWELL. We did all that to fulfill the requirement to extend to deep water.

Senator MORGAN. Very good.

Mr. CROMWELL. And the expenditures, in my judgment, Senator, were all very reasonable, considering the great time and services occasioned and the value of the result. The board of directors, although I am only one of them——

Senator MORGAN. Please try to make your explanations as brief as possible. We have something else to do besides to listen to a profuseness of explanation.

Mr. CROMWELL. I shall be very glad to make them brief. You wanted to know the story.

Senator MORGAN. No; I do not care about knowing all its romantic details. I just want the plain, solid facts.

Mr. CROMWELL. All right. I am giving you the plain, solid facts.

Senator MORGAN. Who was Mancini?

Mr. CROMWELL. Mr. Mancini was at that time the official representative of the canal company at Bogota.

Senator MORGAN. You also appointed him as your official diplomatic agent?

Mr. CROMWELL. We appointed him our agent and attorney to represent the company in whatever might arise at that point.

Senator MORGAN. So that he held two positions, one representing the Panama Canal Company at Bogota and the other representing the railroad company at Bogota as a diplomatic agent?

Mr. CROMWELL. Tht was true, sir, only from the year 1902. We had at that time the firm of Guttierrez & Escobar. They were our attorneys.

Senator MORGAN. At Bogota?

Mr. CROMWELL. At Bogota. They were unable, by reason of some political differences with the Government, to perform their full functions.

Senator MORGAN. They were persona non grata with the Government?

Mr. CROMWELL. I do not know precisely what was their relation, but they were unwilling to pursue a certain branch of their work, and so their compensation was divided; it was only $2,500 per annum anyhow, and their compensation was made $1,300 and Mr. Mancini's $1,200, being the same total amount. Without increasing the

compensation we had the two gentlemen. That was from January, 1902.

Senator MORGAN. What other agents had the railroad company in Bogota at that time transacting this business?

Mr. CROMWELL. None.

Senator MORGAN. The point I want to get at is just this: The canal company being in some sense or other owner, proprietor, or beneficiary in all the interests and property of the railroad company, why were all of these expenses charged to the railroad company and not to the canal company?

Mr. CROMWELL. Senator, in the first place, the canal company was not the owner of the railroad company. We come back to our same difference of opinion.

Senator MORGAN. Well, we will try to escape any further disquisition upon that subject, if you will allow me.

Mr. CROMWELL. Second, the transaction was that of the railroad company itself. It related solely to its own concession.

Senator MORGAN. The railroad company was serving its master, in its own name, and paying the expenses?

Mr. CROMWELL. Again, Senator, you want to twist it that way, when you say you want to state facts. I say again that they were not serving their own master. They had no master. The railroad company was serving its own interest, as a railroad corporation.

Senator MORGAN. And paying the expenses, whereas the canal company was the real beneficiary in whatever results were obtained there?

Mr. CROMWELL. It was paying its own expenses, because the work was its own. That is the only reason.

Senator MORGAN. Another consideration: It was manifestly to the interest of the canal company that it should settle all questions and rid itself of all the property it had there into the hands of the railroad company in the event that this calamity should take place which you mentioned in the minutes here a year beforehand, of the failure to get that extension from 1904 to 1910?

Mr. CROMWELL. No, sir; because the extension had been granted at the time you are speaking of.

Senator MORGAN. At what time was it granted?

Mr. CROMWELL. You have given the date a moment ago—April, 1900. Now you are speaking of the date 1902.

Senator MORGAN. It was granted by Sanclemente, President of Colombia, when the Colombian people were then in a state of siege, and 100,000 of them were slain in that war, and $6,000,000 of debt imposed upon that country in consequence of that grant. Is not that the fact?

Mr. CROMWELL. It is not, in my judgment, the fact. I know of no facts supporting that statement.

Senator MORGAN. I find in the record a great many that do support it absolutely.

Mr. CROMWELL. Senator, nobody can doubt your ability to find anything in the record.

Senator MORGAN. I am trying to ascertain your personal knowledge and your personal connection with the transaction.

Mr. CROMWELL. I have told you all about it.

Senator MORGAN. You have told me all you know about it?

Mr. CROMWELL. I have told you all about it.

Senator MORGAN. Have you told me all you know about it?

Mr. CROMWELL. I have told you all that came within my relation with the railroad company. I do not know of anything else in connection with the railroad company that has any bearing on this subject, except the minutes of May, 1898.

Senator MORGAN. Do you know of anything in connection with the Panama Canal Company bearing upon it?

Mr. CROMWELL. If I did, it would be covered by my privilege.

Senator MORGAN. Do you?

Mr. CROMWELL. I have no present distinct memory about anything, and I am not avoiding it upon that score, but——

Senator MORGAN. I am not inquiring about the distinctness of your memory, but about the comprehensiveness of it. Do you know of any of the facts that I have just referred to in connection with the Panama Canal Company?

Mr. CROMWELL. What facts do you refer to?

(By request of Senator Morgan, the stenographer read the last five questions and answers.)

Senator MORGAN. They have now been restated in your hearing, and I think you must comprehend them. The facts relating to the prolongation of the concession, and also the reasons why it was necessary for the Panama Canal Company to obtain that extension for the safety of the situation against the power of Colombia to forfeit its concessions, and also for carrying out your plan for Americanizing that canal. That is the question.

Mr. CROMWELL. I consider that as embraced within the confidences of and relations with my client.

Senator MORGAN. And you refuse to answer?

Mr. CROMWELL. For that reason I decline to answer. This I do, I may say again, with the greatest respect to the committee and with deference to its dignity, and also with a due regard to my duties to my client.

The committee thereupon adjourned until to-morrow, Wednesday, May 30, 1906, at 10.30 o'clock a. m.

The following papers are, by direction of the committee, printed as a part of to-day's record:

PANAMA RAILROAD COMPANY,
New York, May 28, 1906.

Hon. JOS. H. MILLARD.
Chairman Committee Interoceanic Canals,
Washington, D. C.

DEAR SIR: In addition to the statements forwarded to you under cover of mine of the 24th instant, and in accordance with the final paragraph of that letter, I now beg to inclose herewith statement of all payments by the Panama Railroad Company to the old and New Panama Canal Company from 1892 to May 7, 1904, in addition to payments for La Boca terminal, shown in previous statements.

You will observe by the notation on the within statement that the balances of account were, with the above exceptions, invariably in favor of the railroad company, and thus there were no payments con-

tributed to the canal companies by the railroad " in money or in other values " since 1892, concerning which Senator Morgan's letter to you of the 17th makes inquiry.

Respectfully,

E. A. DRAKE,
Assistant to the President.

Statement of all payments by the Panama Railroad Company to the New Panama Canal Company from 1892 to May 7, 1904, in addition to payments for La Boca terminal, shown in previous statements.

October 14, 1902, cash	$12,849.72
December 20, 1902, cash	3,485.02
	16,334.74

These payments were all balances of accounts between the two companies.

During the same period the old and new canal companies paid to the railroad company a total of $195,194.79, for balances of accounts in favor of the railroad company, so that the railroad company received from both canal companies $178,860.05 more than it paid them.

NEW YORK, *May 28, 1906.*

Statement of account with the New Panama Canal Company for construction of La Boca pier.

PANAMA RAILROAD COMPANY, TO CANAL COMPANY, DR.

For accounts for construction of La Boca pier	$1,565,650.99
For amounts expended for railroad, having no relation to La Boca pier	7,244.16
Total	1,572,895.15

This indebtedness was paid as follows: To balances of monthly accounts due by the canal company to the railroad for transportation, supplies, and coal furnished, etc., the cost of Culebra deviation, and cash paid, viz:

Nov. 30, 1898. Accounts due Panama Railroad	$15,832.82
Dec. 31, 1898. Accounts due Panama Railroad	12,176.90
Dec. 31, 1898. Cash paid	19,889.66
Feb. 2, 1899. Accounts due Panama Railroad	1,071.23
Mar. 31, 1899. Accounts due Panama Railroad	1,639.18
July 31, 1899. Cash paid	482.35
Aug. 31, 1899. Accounts due Panama Railroad	17,549.95
Oct. 1, 1899. Cash paid	47,190.00
Mar. 27, 1900. Cash paid	261,269.68
Oct. 1, 1900. Cash paid	40,910.00
Nov. 30, 1900. Accounts due Panama Railroad	118,129.23
May 31, 1901. Accounts due Panama Railroad	18,818.41
June 18, 1901. Cash paid	31,675.08
Oct. 1, 1901. Cash paid	5,362.50
Oct. 31, 1901. Accounts due Panama Railroad	5,280.68
Dec. 3, 1901. Cash paid	28,053.98
Feb. 20, 1902. Cash paid	508,687.50
Mar. 31, 1902. Accounts due Panama Railroad	7,363.19
Apr. 7, 1902. Cash paid	431,512.81
Total	1,572,895.15

NEW YORK, *May 21, 1906.*

Statement of rolling stock purchased from the liquidateur of the Compagnie Universelle du Canal Interoceanique de Panama in August, 1892.

27 locomotives, 269 box cars, 237 coal cars, 452 flat cars		$400,000
When paying for this rolling stock there was deducted from above amount		40,000
Due from the Compagnie Universelle to the railroad for the reconstruction of wharf No. 5 at Colon, which wharf, under the terms of the lease, the Compagnie Universelle were to keep in repair and return to the railroad in as good condition as when delivered to them; leaving a balance due the liquidateur of		360,000
Which was paid as follows:		
August 8, 1892, cash	$180,000	
June 1, 1893, cash	180,000	
		360,000

NEW YORK, *May 21, 1906.*

Statement of account against New Panama Canal Company for building Culebra deviation.

Amount due by canal company to Panama Railroad for work upon Culebra deviation from January, 1899, to December 31, 1901		$100,538.59
Interest on accounts to dates of settlement		2,071.41
		102,610.00

This indebtedness of the canal company to the railroad was paid by accounts in favor of the canal company for La Boca pier as follows:

November 30, 1900	$87,211.28	
May 31, 1901	8,548.25	
October 31, 1901	106.78	
March 31, 1902	6,743.69	
		$102,610.00

Statement of dividends paid on stock of the Panama Railroad Company, formerly belonging to the Cie Universelle du Canal Interoceanique de Panama, from March 28, 1892, to May 7, 1904, inclusive.

Dividends paid to:		
March 28, 1892:		
Henry Boudet (trustee), 1,021 shares, 2 per cent	$2,042.00	
Paul A. Cheramy (trustee), 30,500 shares, 2 per cent	61,000.00	
Paul E. F. Hyronimus (trustee), 37,000 shares, 2 per cent	74,000.00	
68,521 shares		$137,042.00
January 3, 1893:		
Henry Boudet (trustee), 1,021 shares, 2 per cent	$2,042.00	
Paul A. Cheramy (trustee), 30,500 shares, 2 per cent	61,000.00	
Paul E. F. Hyronimus (trustee), 37,000 shares, 2 per cent	74,000.00	
68,521 shares		137,042.00
March 25, 1901: Jean Pierre Gautron, liquidateur de la Cie Universelle du Canal Interoceanique de Panama, 68,534 shares, 2 per cent		137,068.00
June 5, 1902: Jean Pierre Gautron, liquidateur, etc., 68,534 shares, 2 per cent		137,068.00

September 5, 1902: Jean Pierre Gautron, liquidateur, etc., 68,534 shares, 2 per cent	$137,068.00
April 3, 1903: Jean Pierre Gautron, liquidateur, etc., 68,534 shares, 2 per cent	137,068.00
October 1, 1903: Jean Pierre Gautron, liquidateur, etc., 68,534 shares, 2 per cent	137,068.00
January 1, 1904: Jean Pierre Gautron, liquidateur, etc., 68,534 shares, 4 per cent	274,136.00
May 3, 1904: Jean Pierre Gautron, liquidateur, etc., 68,534 shares, 2½ per cent	171,335.00
	1,404,895.00

NEW YORK, *May 21, 1906.*

Statement of payments to railroad officials and counsel in respect to La Boca and other negotiations with Republic of Colombia from 1892 to May 7, 1904.

Payments to Mr. X. Boyard, special agent, in compensation for his services and expenses in connection with his trip to Bogota to obtain the acceptance by the Colombian Government of the company's works at La Boca as a compliance with conditions of Article IV of the contract of concession, viz:

Services:		
March 18, 1897	$4,000	
November 12, 1897	800	
December 14, 1897	5,200	
		$10,000.00
Disbursements		1,215.97
		11,215.97

Payments to J. A. Arango, special agent, for services and expenses to, at, and from Bogota, respecting acceptance of La Boca extension, viz:

October 3, 1898	$400.00	
October 13, 1898	750.00	
October 26, 1898	3,000.00	
		$4,150.00
November 23, 1898		400.00
February 15, 1899	$15,000.00	
February 6, 1899	2,000.00	
February 6, 1899 (cable)	5.82	
		17,005.82
May 16, 1899	6,000.00	
May 31, 1899	5.82	
		6,005.82
July 20, 1899		350.00
September 23, 1899		1,200.00
December 29, 1899		1,200.00
February 16, 1900	$165.00	
February 26, 1900	200.00	
		365.00
May 2, 1900		250.00
August 15, 1900		1,241.00
January 17, 1901		5,000.00
March 11, 1901	$232.75	
March 30, 1901	22,300.00	
		22,532.75
April 30, 1901, to March 31, 1904, at $125 per month		4,500.00
		64,200.39
Payment to government of the department of Panama for Panama railroad's proportion of half of the fees charged the Government by Captains Bucknam and Brown for their inspection of the La Boca terminals		400.00

Payments to attorneys and agents of Panama Railroad Company resident at Bogota, Republic of Colombia:

Messrs. Gutierrez & Escobar, attorneys:	
Salary, $2,500 per annum, payable quarterly, and expenses for cables, official publications, etc., for year—	
1892	$2,515.50
1893	2,655.40
1894	3,186.00
1895	2,548.00
1896	2,565.25
1897	2,579.70
1898	1,882.20
1899	3,140.77
1900	1,870.00
1901	3,126.40
	26,069.22
Salary reduced to $1,300 per annum and expenses, as above, from January 1, 1902—	
For year 1902	1,324.00
January 1 to November 7, 1903	1,110.93
	2,434.93
January 6, 1904, special fee for services in court in defense of suit by attorney-general of Colombia in the matter of through billing	1,000.00
Mr. A. Mancini, diplomatic agent:	
Salary $1,200 per annum from January 20, 1902, and expenses for cables, etc.—	
For year 1902	900.00
For year 1903	1,210.00
For quarter ending January 20, 1904	400.00
	2,510.00

MAY 21, 1906.

The following are the documents referred to in the letter of the Secretary of State to Senator Morgan (printed in to-day's proceedings):

[Translation.]

[Compagnie Nouvelle du Canal de Panama, 7 Rue Louis le Grand, Paris. Capital, 65,000,000 francs.]

PARIS, *November 18, 1898.*

To the PRESIDENT OF THE UNITED STATES.

SIR: The New Panama Canal Company believes it to be its duty to respectfully submit the following statement:

It is common knowledge that in 1889 the Compagnie Universelle du Canal Interoceanique de Panama, the old company, fell into financial difficulties after about one-third of the canal had been finished. The rights of that company then passed judicial administration. A liquidator (receiver) was appointed by the judgment of the civil tribunal of the Seine under date of the 4th of February, 1889. During his administration (1889–1894) and with the authorization of the court, the greatest care was taken to preserve and maintain the work already done, and a prolongation was obtained from the Republic of Colom-

bia of the time stipulated for the completion of the canal, thus preserving the rights of the company under its concession in their entirety.

In view of the advanced state of the work on the canal, and the considerable sum (at least $150,000,000) actually expended for canal work properly so called, and for installations and plant, the logical conclusion followed that the very large capital invested would be protected through a reorganization of the affairs which took place successfully in the month of October, 1894. At that time and with this object in view the undersigned company was organized under the general laws of France. The company is a commercial association, formed exclusively upon private capital, and has no connection, alliance, or relation whatever with any government, except the relations established by the concessions which it holds from the Republic of Colombia. The board of directors of the company is an entirely new board and composed of gentlemen of independent positions, having no official relation with the old Panama Company, and for the most part identified with large financial and commercial enterprises.

Pursuant to judicial sale, authorized by the court as aforesaid, the undersigned company in 1894 became the sole owner of all the canal works, plant, material, concessions, and other property of the old company. The title of the undersigned to this property is therefore unquestionable, and has been officially recognized by the Government of Colombia.

Surveys have been made by the old company, but the new company, while making use of them, would not be bound by their conclusions. The board of directors resolved at the start to examine and study anew all the questions involved, making use of the most recent improvements in material and of the advances made in engineering.

It is needless for us to enumerate the difficulties and enormous expense involved in the choice of a definite plan for the execution of this work, which is one of the greatest undertakings of our time.

Different plans, equally practicable but varying in probable cost, have been studied. Many months have been spent in preparing, studying, and revising them. This work has not been done hastily and superficially. Engineers, chosen specially for their professional ability, have studied the question in all its details—technical, climatic, physical, geologic, and economic.

Though the skill of its own technical staff is worthy of the highest confidence, the undersigned company, out of abundant caution and in order to place beyond criticism the final conclusions, caused to be appointed an International Technical Commission, composed of engineers selected from different nationalities, a course which assures to the company the benefit of the widest possible experience, the severest judgment, and the most independent conclusions. The International Technical Commission is composed as follows:

M. Robaglia, president, inspector-general of roads and bridges (retired).

M. Bouvier, chairman, inspector-general of roads and bridges (retired).

General Abbot, United States Engineer Corps.

M. Castel, inspector-general of mines (retired).

M. Daymard, chief engineer of La Compagnie Transatlantique.

M. Fargue, inspector-general of roads and bridges (retired).
M. Fteley, chief engineer of the Croton Aqueduct, New York City.
M. Fulscher, private counsellor to the minister of public works of Prussia, formerly technical director of the work of the Kiel Canal.
M. Hersent, civil engineer.
M. Hunter, chief engineer of the Manchester Canal.
M. Koch, councillor of public works of Germany; director of Technical Academy of Darmstadt; formerly member of the Imperial commission of the Kiel Canal.
M. Jules Martin, inspector-general of roads and bridges (retired).
M. Skalskowski, formerly director of the department of mines to the minister of agriculture and lands of Russia.
M. Sosa, chief engineer, Colombia.[a]

As to all statistical and economic questions, the new company established a special commission, presided over by M. Paul Leroy-Beaulieu, the eminent economist, and a member of the Institute of France.

It is certain that the members of these two commissions are the most distinguished and able men in their professions. No one of them would compromise his reputation and his honor, acquired by a long life of eminent services, by formulating conclusions upon unfounded, incomplete, superficial, or uncertain information.

By the closest study of the subject; by actual inspection of the works of the canal, made by several of its members; by full discussion and by frequent exchange of views; by subjecting every problem to the critical judgment of all, thus obtaining the most varied opinions; by all the methods and with all the care which the most advanced technical experience could suggest, this eminent commission of engineers has reached a unanimous conclusion, which has been officially communicated to this company, and upon which this company is pursuing the work of construction. These conclusions, signed by every member of the commission, establish the entire feasibility and practicability of completing the canal.

We do not doubt that you will be interested to learn the essential features of our plans, which have been prepared with so much labor and care, and confirmed by four years of continuous study.

1. The old company had already substituted for the proposed sea-level canal a system of locks. This principle, with important modifications and improvements, has been adopted by the new company.

2. The length of the canal from ocean to ocean is 46 miles.

3. The locks will not exceed four on each slope of the divide; all locks will have a rock foundation, and all will have double lock chambers.

4. There is nothing in the physical conditions on the Isthmus to prevent a change from a canal with a system of locks to a sea-level canal should the latter seem desirable in the future.

5. The time of passage from ocean to ocean will be less than a day.

6. The harbors situated at either extremity (Panama and Colon) are not artificial harbors; they are natural harbors, safe and satisfactory, needing but slight improvement. This fact is known to all

[a] The commission has been deprived of the services of M. Sosa, who was lost in the Bourgogne catastrophe, and M. Bouvier, who died on the 8th of September, 1898.

the world, thanks to commerce, which for almost fifty years has made use of the Panama route (the Panama Railroad).

7. Two-fifths of the work on the canal has been actually constructed; the remaining three-fifths is in a fair way of completion. During the last four years three or four thousand workmen, on an average, have been employed in working on the canal.

8. The company's concessions are unquestionable. The Republic of Colombia has given to the enterprise its cordial and sincere cooperation.

9. The existence and operation of the railroad, long established on the proposed line of the canal, greatly facilitates its construction.

10. No construction is planned which is not fully justified by practical experience.

Formerly the greatest difficulties were:

(*a*) The control of the floods of the Chagres River; and

(*b*) The excavation of the Culebra cut.

The manner in which each of these difficulties is to be surmounted is shown with the greatest detail in the report of the technical commission, which we have the honor to present to you.

The condition of the new company is equally satisfactory. Its assets, including the work actually done on the canal, the buildings, the machinery, the material on hand, exceeds in value 500,000,000 francs, or $100,000,000, which valuation has been made by a special commission, of which the former director of the National Academy of Roads and Bridges of France was chairman. The company has no mortgage or bonded indebtedness. The property is free from all incumbrance. The company has no other debts than monthly pay rolls. Its cash reserve is largely in excess of its actual needs.

The undersigned company also invites your attention to the provisions of its concession, particularly articles 5 and 6, which reserves all rights to the Government of the United States secured by the treaty with the Republic of Colombia signed in 1846 and ratified in 1848.

We have the honor to be, your obedient servants,

J. BONNARDEL,
The President of the Board of Directors.

Certified by the secretary of the company.

ED. LAMPRE.

Mr. Cromwell to Mr. Hay.

NEW YORK, *November 28, 1898.*

DEAR SIR: Referring to the interview which you accorded me on Friday last and to your gracious assurance that you would give audience to the director-general of the New Panama Canal Company and ourselves in connection with the presentation to the President of the communication which the New Panama Canal Company is about to make to the Government, I beg leave to advise you that by reason of the severe prevailing storm *La Touraine* was delayed in arrival until to-day, and that we shall therefore not be able to translate the documents and prepare them for presentation before Wednesday. I will

advise you further of our coming, keeping in mind the preference which you indicated, that the hour of conference be about 11 o'clock in the forenoon.

I have the honor, etc.,

WM. NELSON CROMWELL,
American Counsel for New Panama Canal Company.

Mr. Cromwell to Mr. Hay.

[Telegram.]

NEW YORK, *December 5, 1898.*

Am writing you to-day concerning the cable from Consul-General Hart published Saturday. It is evident that the limited purpose and nature of the measure referred to is not fully reported from Bogota, and is given undue significance.

WM. NELSON CROMWELL,
Counsel New Panama Canal Company.

Mr. Cromwell to Mr. Hay.

NEW YORK, *December 5, 1898.*

MY DEAR SIR: I beg leave to confirm the telegram which I sent you at 10.45 this morning, as per inclosure.

Upon my return I learned through Director-General Hutin (who had preceded me to New York) that the measure which had just been acted on by one branch only of the Colombian Congress was a bill to authorize the executive to negotiate the terms of and to conclude a further prorogation of six years from 1904 for the completion of the canal under a communication which the company had addressed to the Government, in the form of which I inclose you a translation.

You will note that the company specifically stated to the Government that the prorogation was not a matter of absolute necessity, but was desirable in the interests of commerce and navigation to enable an even deeper cut to be made (and which would reduce the number of locks to four), but which reduction would of course require more time than the plan adopted.

You will note that the bill proposed to confer power upon the Executive, and this happened to arise under extraordinary political conditions in Bogotá. As you have probably been advised through official channels, a serious difference has recently been existing between the House of Representatives of Colombia and the President, the House having passed formal resolution declaring the office of President vacant, and refusing to recognize the qualification of the President before the supreme court.

We therefore construe the action of the House of Representatives as only a part of the strife between the House and the President, and not a declaration of the policy of the nation or the Congress in re-

spect of the Panama Canal, and as not evidencing hostility to the company itself. We are the more confirmed in this belief because of the uniform consideration and cordiality displayed by the Congress and the Government to the New Panama Canal Company, which we have no doubt their minister at Washington would fully confirm to you.

Our company has not the least apprehension regarding any prorogation of its concessions it may consider necessary in the future.

I have, etc., your obedient servant.

WM. NELSON CROMWELL,
Counsel New Panama Canal Company.

[Inclosure in letter of Mr. Cromwell to Mr. Hay, December 5, 1898.]

To the Seigneurie, Dr. P. A. MOLINA,
Minister of Finance of the Republic of Colombia, Bogotá:

Alexander Napoleon Mancini, representative to the Government of Colombia of the New Panama Canal Company, has the honor to reply to your excellency and to explain the following, viz:

At the time of the prorogation accorded in 1893 there was in view the completion of the canal in accordance with the plan as established by the technical commission, which plan determined the lowest level of the divide to be between 35 and 30 meters below the sea level.

The studies made by the new company show that it will be of great advantage to make the cut deeper, and such work will naturally require a longer time.

It is not necessary to call urgent attention to the fact that the Colombian Government itself has the greatest interest to facilitate the completion of the canal affording the best possible conditions for navigation and commerce.

There is no doubt that the interests of Colombia are closely identified with those of the canal company, and that the future of this nation depends in part upon the success of the works of the canal at Panama; and it is admitted that in order to provide in a very complete manner the increasing necessities of navigation and commerce it becomes doubly important to deepen the cut of the central mass below 25 meters. The plan of completion of the canal as prepared by the company, with the aid of its technical commission, suggests the idea to the canal management of deepening the cut to about 10 meters. Therefore the time of completion of the canal, which is at the end of 1904, becomes insufficient for the completion of said important work, and the company could not without serious risk of miscalculation affirm that the canal with such modification can be completed within the said time, and the company considers that it is proper to ask a prorogation of six years from 1904, so that it may complete the canal in the condition above mentioned.

All that precedes is not of absolute necessity. The company can, if necessary, make the cut at 25 meters, for instance, as heretofore calculated, and in that case a further prorogation will not be absolutely necessary. But, on the other hand, the company considers, as said above, that the deepening of the cut to about 10 meters will give much better results in respect to the operation of the canal.

The Colombian Government can not fail to realize the importance of the purpose above explained and of the interest attached to a prorogation. Consequently, and in consideration of the considerable advantages which will inure to general commerce from the opening of the canal, the undersigned solicits, in the name of the New Panama Canal Company, a prorogation of six years for the completion of the canal, and is confident that the Government of the Republic will accord such extension of time under the best possible conditions.

The company relies upon the kind cooperation of the Colombian Government, which has such great interest in the work, to facilitate the completion of such work.

The undersigned does not need to recall to your excellency that during the past four years the company has constructed works of such great importance that they have attracted the attention and approbation of all competent people who have visited the Isthmus.

I have, etc.,

A. MANCINI,
Representative of the New Panama Canal Company.

BOGOTA, *November 1, 1898.*

Messrs. Sullivan & Cromwell to Mr. Hay.

NEW YORK, *December 21, 1898.*

MY DEAR SIR: Further to my letter of December 5, 1898, receipt of which was acknowledged by your favor of the 8th instant, I beg leave to say that we are advised by our counsel at Bogotá that the official minutes of the session of the House of Representatives declares that the bill concerning the extension of the New Panama Canal Company has not been acted upon for lack of time. We, however, yesterday received further cable advising us that the Government had granted the extension subject to the approval of the next Congress, and I note from this morning's Herald that similar advices have been received by the press.

It is the opinion of the Government executives and of ourselves that power to give such extension is already located in the Government by the terms of the original concession; but the formality of ratification will be requested in due course, and of its being granted we have not the remotest apprehension.

You will thus see that my confidence in the attitude of Colombia, as indicated in my last note, has been fully and quickly confirmed.

Faithfully, yours,

WM. NELSON CROMWELL,
General Counsel New Panama Canal Company.

Mr. Hutin to Mr. Hay.

NEW YORK, *December 21, 1898.*

SIR: In addition to the certified copy of the official report of the International Technical Commission, which I had the honor of delivering to you on the 2d instant as a part of the communication of the

company addressed to the President under date of November 18, 1898, I now have the honor of handing you a copy of an additional report made November 19, 1898, by Messrs. Zurcher and Bertrand, eminent engineers of France, upon the cut of the Culebra and Emperador mountains.

The report of the International Technical Commission, as well as the inclosure, being part of our official communication to the President, are for your official files and use. I merely mention this that you may not courteously consider them confidential.

I have the honor, etc.,

M. HUTIN,

Director-General of the New Panama Canal Company.

[Inclosure—Translation.]

NOTE ON THE CULEBRA AND EMPERADOR CUTS.

The works of the preparatory trench (cunette) and the wells accompanying them now enable us to understand with great certainty the composition and general nature of the soil to be removed. We can very happily say that the difficulties previously foreseen are greatly diminished by this more complete examination.

In the first explorations the explorers were naturally very much struck by the abundance of eruptive rocks, and it was supposed that the central frame of the Isthmus was formed of such rocks of great hardness, in which clay was found only in pockets more or less deep. The first works, on the contrary, by bringing to light a succession of clays of little solidity gave reason to fear the possibility of caving in and the necessity of very gentle slopes. Now, in reality, the axis of the Isthmus is formed of a series of sandstone, pudding stone, and marl of medium hardness, and the eruptive rocks spreading through these sheets or veins play only a secondary part. So far as hardness and solidity are concerned, it may therefore be said that the conditions will be more favorable than could at first be hoped.

The geological formation of the Isthmus seems, from the studies already made to display, as the most ancient formation, an eruptive breccia, improperly designated Gamboa sandstone.[a]

It will be met with only in the Emperador cut, where it will constitute less than one-seventh of the excavation.[b] It would not reappear

[a] The Gamboa rock seems to be closely connected with the conglomerates of Bohio, in which M. Douvillé ascertained the presence of nummulites. It is likewise probable that the limestone containing nummulites in the neighborhood of Emperador, described by Mr. Hill, ought to belong to the same lower series, the age of which is probably Lower Oligocene or Eocene. All these determinations of age, however, are given only provisionally, as the study of the materials collected is not yet finished.

[b] The proportion of one-seventh has been calculated on the provisional cut estimated by the axis of the trench (cunette). As the eruptive rock is met with most in the deepest parts, where the width is less, it can be seen that this proportion ought to be considerably diminished, even allowing for the total excavation.

in the Culebra cut, even if the canal were made on a level. It seems to support in discordance the alternation of pudding stone, sandstone, and marl, already mentioned. This system, which is probably of the Upper Oligocene age, ends at the top by a bed of lignites and a bank of lenticular limestone (km. 49), the fossils in which give reason to attribute it to the Miocene. Subsequent eruptions, mostly of a basaltic nature, have given rise to veins, which cross the strata vertically, which, in places, have penetrated between the beds in long intrusive sheets, and which have cropped out in the hills (cerros). The importance of these eruptive rocks, so far as the excavations are concerned, is entirely secondary. The position of the beds remains regular and evidently horizontal in the neighborhood of the veins and of the sheets, and there is no reason to fear any of the disturbances the possibility of which caused anxiety to the Commission of studies of 1889, and which might have given rise to more or less important local slides.

It may be said practically that the whole of the work of the great cut (Culebra) must be made in the sedimentary system of the pudding stone, sandstone, and marl, the hardness of which, according to the old soundings, hardly exceeds No. VI of the scale adopted, and the rocks of which may all consequently be cut with steel. The examination of these lands shows that they will stand extremely well, and this fact has been practically proved by the experience of the preparatory trench (cunette), the slopes of which have been exposed to the air for more than two years. Even the marl, which, when in separate pieces, disintegrates and splits easily, resists very well in a mass, and may require, at the most, some local supports to protect it from the action of the atmosphere.

In the upper part the strata, which have been more or less affected, have assumed a red tint and a more clayey composition to a variable height, which, in some places, may be as much as 20 meters. These strata, which were almost entirely excavated by the old company with a width corresponding that of the canal at its level, are those which caused the Cucoracha caving-in. Other little cavings-in occurred above Emperador (kil. 51), and recently above Cucoracha. The question of these cavings-in was formerly a cause of great anxiety, but that cause no longer exists. That of Cucoracha was partly due to want of care in the method of constructing the embankments, and it was easily stopped by comparatively simple works of drainage. Besides at that point (from 54.5 to 55.5) the slope of the clays on the left bank is directed toward the cut, and may be as much as 20°. Admitting, therefore, that special precautions must be taken to prevent the recurrence of such an accident, they would only extend over about 1 kilometer.

To sum up, the work will be done in sedimentary ground, the regularity of which enables precautions to be taken with great certainty. No very hard rocks will be encountered, excepting at the most a seventh of the Emperador cut. The other ground, which is of medium hardness, holds extremely well and will not need any supports; an average slope of 45° (including the banquettes) can be safely used with them. There are no caving belts to fear, except the clays of the upper part, which are already almost entirely excavated, and if any special precautions are to be taken against cavings-in, it would

only be for the small extent of about 1 kilometer, where the slope of the clay is toward the cut.

November 19, 1898.

M. BERTRAND,
Chief Engineer of Mines, Member of the Institute.
M. ZURCHER,
Chief Engineer of Bridges and Roads.

Messrs. Sullivan & Cromwell to Mr. Hay.

NEW YORK, *January 3, 1899.*

SIR: Further to the documents which the New Panama Canal Company has had the honor to place in your hands for official use, we beg leave to hand you herewith, for like use, printed copy of a publication to-day issued by the company.

Very respectfully, yours,

SULLIVAN & CROMWELL,
General Counsel.

Messrs. Sullivan & Cromwell to Mr. Hay.

NEW YORK, *February 28, 1899.*

DEAR SIR: We beg leave to hand you herewith a copy of the communication which this day has been addressed to the President.

We are, etc.,

SULLIVAN & CROMWELL,
General Counsel.

Mr. Hutin and Messrs. Sullivan & Cromwell to the President.

NEW YORK, *February 28, 1899.*

SIR: 1. The New Panama Canal Company has never proposed and does not seek any appropriation or financial aid from the Government of the United States in the completion of its canal.

2. It places its canal works on the Isthmus of Panama subject to the examination of this Government, or any special commission through whom it may be desired to make such examination, and will facilitate in every possible way any such desire of the Government.

3. The Government will find that fully two-fifths of the canal works are already constructed; that continuously during the past four years from 3,000 to 4,000 men, under a large force of engineers, have been and are now actually engaged upon its works; that all technical and physical problems have been solved by the eminent "International Engineering Commission," whose report of November 18 last is before you; that the canal is undoubtedly feasible and the harbors at both ends natural harbors and entirely satisfactory; that its concessions are perfect and unquestioned, and that the relations of the United States to the canal are especial and superior by reason of the

"special and remarkable advantages" secured to it by the treaty of 1846 between the United States and Colombia, and which rights, whatever they may be, were scrupulously respected, observed, and confirmed in the concessions of Colombia to the Panama Canal Company, under which the canal is being completed.

4. While the New Panama Canal Company does not seek any financial aid from the Government, it recognizes the national sentiment in favor of acquiring some pecuniary interest in any canal connecting the Atlantic and Pacific oceans. Therefore the New Panama Canal Company declares that if, as the result of any such investigation, the Government of the United States adopts the Panama route, the company, if the Government so desires, will reincorporate under the laws of the State of New York (under the laws of which State the Panama Railroad Company has existed for nearly fifty years) or of some other State of the Union, subject to the provisions of its concession, and vest its concessions and property in such corporation. It will also in said event accord to the United States such representation in its board of directors, and such opportunity to acquire an interest in its securities, as may be permitted by its concessions, which, of course, must be scrupulously observed.

And further, if the United States should desire to perpetuate or enlarge its existing rights and privileges, acquired under said treaty of 1846, the company will conform to such supplemental treaty as may be entered into between the United States and Colombia.

We beg leave to say that yesterday, at a public hearing accorded us by the Committee on Rivers and Harbors of the House of Representatives, we submitted to the chairman and gentlemen of that committee a communication to the foregoing purport, and have the honor to be,

Your obedient servants,

MAURICE HUTIN,
Director-General of the New Panama Canal Company.
SULLIVAN & CROMWELL,
General Counsel, New York City.

Mr. Hutin to the President.

COMPAGNIE NOUVELLE DU CANAL DE PANAMA,
45 Wall Street, New York City, March 11, 1899.

To the PRESIDENT:

Referring to the act of Congress approved on the 4th instant respecting an investigation of the Panama and Nicaragua canals, the New Panama Canal Company, as one of the subjects of the inquiry, respectfully invites attention to its communication addressed to you December 2, 1898, and to its subsequent offers to the honorable Secretary of State, and finally to its official proposition of February 27 last, all of which contain the proffer and urgent invitation that the President or Congress make the fullest investigation of the canal works, plans, seven concessions, and status of the New Panama Company; and it also refers to the official report upon the canal made by the In-

ternational Technical Commission November 16, 1898, and placed in your hands by us on December 2 last.

The said act of Congress is therefore in full accord with our repeated offers and our warmest desires.

We again most respectfully renew our proffer of the fullest investigation and our offer of all the facilities to that end. But the subject is of such transcendent consequence to the United States, to the people of the world as well as to ourselves, that we venture, with due respect, to submit this our petition that any commission designated to aid you in making the investigation and comparison contemplated by the act of Congress be composed of gentlemen of the widest experience, of exceptional character and unquestioned professional standing, and who are not embarrassed by public committals or previous records favorable or unfavorable to either one or the other project and who have not heretofore served upon any canal commission.

The New Panama Canal Company does not present or suggest any name for membership of any commission. Its only petition is that the selection be of gentlemen whose conclusion will at once command public confidence, fully relying upon its ability to satisfy fair and impartial investigation of the merits of its canal.

THE NEW PANAMA CANAL COMPANY,
By MAURICE HUTIN, *Director-General.*
SULLIVAN & CROMWELL, *General Counsel.*

Mr. Boyard to Mr. Hay.

NEW YORK, *January 8, 1900.*

DEAR SIR: I am requested by a cablegram from the New Panama Canal Company to beg, at the earliest date, an audience with you for the purpose of communicating to you a message from my company. I will leave New York to-night and will be in Washington to-morrow morning, Tuesday, at the Arlington.

Upon my arrival I will respectfully request you to appoint a time for the audience either in the morning or in the afternoon, at your convenience.

I beg to remind you that I already had the honor of an interview with you, a year ago, in company with our director-general, Mr. Hutin.

Very respectfully, yours,

X. BOYARD,
Commercial Representative of the New Panama Canal Co.

[Inclosure.]

M. Navarre to Mr. Boyard.

[Telegram.]

PARIS, *January 6, 1900.*

X. BOYARD, *New York:*

Board of management has resigned. I have been appointed, by decision of the court, sole temporary manager of the New Panama Canal Company, instead of the board of management, and with its

powers. I have assumed the duties of my office, retaining the director-general and all the principal officers, and I now confirm you in the position which you hold. My mission will last until the meeting of the general assembly of the stockholders, which will take place at the usual time, very soon. Under these circumstances, be pleased to go to Washington immediately and to inform the Secretary of State that I shall in no wise modify the attitude assumed by the New Panama Canal Company in the declarations which it made to the Secretary of State himself December 2, 1898,[a] through the director-general, to the Committee on Rivers and Harbors, to the President of the Republic of the United States February 27 and 28, 1899,[a] and to Admiral Walker in the conference with the American commission at Paris September 8, 1899.

(Signed) EUGENE NAVARRE.

Mr. Boyard to Mr. Hay.

NEW YORK, *January 20, 1900.*

DEAR SIR: Mr. Eugene Navarre, administrateur temporaire de la Compagnie Nouvelle du Canal de Panama, begs me, by cable received this morning, to inform you that the meeting of the stockholders of the New Panama Canal Company will take place on February 12, 1900.

Very respectfully, yours,

X. BOYARD,
Commercial Representative of the Panama Canal Company.

Copy of a telegram handed to the Secretary of State, February 14, 1900, by Mr. Xavier Boyard, representing the New Panama Canal Company.

[Translation.]

PARIS, *February 12, 1900.*

X. BOYARD, *New York:*

The general meeting of the shareholders has this day chosen a new board of management, which organized immediately under the presidency of Maurice Hutin, who, meantime, will continue to discharge his functions as director-general.

A list of the new members of the board, who represent the Paris establishments of credit and the more important groups of shareholders, will be sent to you by mail.

The new board of management confirms the declarations contained in the dispatch of January 6, which was sent you by Navarre, and requests you to go to Washington in order to renew to the honorable Secretary of State, Mr. Hay, the previous declarations of the New Panama Canal Company.

(Signed) HUTIN.

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[a] Oral interviews.

WASHINGTON, *April 30, 1900.*

The President:

Permit us to refer to the communication addressed to you on February 28, 1899, by the Compagnie Nouvelle du Canal de Panama, and of which we attach a copy for your convenience.

Three days after the above communication (and which was similar to that addressed to the River and Harbor Committee of the House, Hon. Theodore E. Burton, chairman) Congress enacted the law of March 3, 1899.

Under the powers of said act the President appointed the "Isthmian Canal Commission," composed of Rear-Admiral John G. Walker, Hon. Samuel Pasco, Mr. Alfred Noble, C. E.; Mr. George S. Morison, C. E.; Gen. Peter C. Hains, Prof. William H. Burr, C. E.; Gen. Oswald H. Ernst, Prof. Emory R. Johnson, Mr. Lewis M. Haupt, C. E.

In addition to its examination of all other possible isthmian routes, the Isthmian Canal Commission has made an exhaustive examination of the plans and status of the company at Paris, where the records of twenty years are preserved, and, also, personally has examined upon the Isthmus of Panama the actual canal and canal works of the company and the feasibility of its undertaking, and at this time is further verifying surveys, plans, and specifications with a force of 700 to 800 men in the field.

The Isthmian Canal Commission has not yet made its report to the President, and, as we are advised, has not yet completed its investigations and inquiries upon the technical and other subjects covered by the said act of March 3, 1899, nor has the President yet communicated to Congress his recommendations in the premises.

In all these investigations concerning the Panama Canal the company has made to the Isthmian Canal Commission the fullest exposition and explanations, without reserve or exception, upon every aspect of the subject concerning which the Commission has desired information, and also has delivered to the Commission full and detailed plans, maps, and specifications of the company for the complete excavation and construction of the Panama Canal and canal works. These documents are great in volume and value, and represent the expenditure of a vast sum, as well as the results of many years of study in their original preparation.

The company has avoided any action or course which might by the Government be deemed inconsistent with its said communication of February 28, 1899.

All this the company has done in full reliance upon the avowed purpose of the Government (as embodied in the act of March 3, 1899) of thoroughly and exhaustively investigating and reporting upon all possible isthmian canal routes, and in the reasonable expectation that, in the meantime, no action would be taken upon the subject by the Congress of the United States inconsistent with the expressed purposes of said act.

On the contrary, however, and presumably without knowledge of the foregoing facts, measures have been introduced in Congress, and are to be acted upon in the House of Representatives May 1 and May 2, 1900, having for their purpose the adoption by the Government of another isthmian canal route, without awaiting the recommendation

of the President and the information, report, and conclusions of the Isthmian Canal Commission appointed by the President under the act of March 3, 1899.

We therefore respectfully request that the President advise the Congress of the facts of the case.

We have the honor to be your obedient servants,

SULLIVAN & CROMWELL,
General Counsel Compagnie Nouvelle du Canal de Panama.

ISTHMIAN CANAL.

COMMITTEE ON INTEROCEANIC CANALS,
UNITED STATES SENATE,
Washington, D. C., Tuesday, June 19, 1906.

The committee met at 10.30 o'clock a. m.

Present: Senators Millard (chairman), Platt, Kittredge, Hopkins, Knox, Ankeny, Morgan, Taliaferro, Simmons, and Culberson.

The committee met in executive session, upon the conclusion of which the examination of Mr. Cromwell was resumed.

TESTIMONY OF WILLIAM NELSON CROMWELL, ESQ.—Continued.

Senator MORGAN. Mr. Cromwell, I have been designated by the committee to repeat to you the questions which you have hitherto refused to answer; and before doing so I will ask the clerk to read to you the resolution under which we are now proceeding.

The clerk read as follows:

"*Resolved by this committee*, That the witness, William Nelson Cromwell, be required to answer questions propounded to him as set forth in the record of the proceedings of the committee which he has refused to answer, unless the committee shall excuse him from answering any specific question."

Senator MORGAN. On page 1142 of the record the following statement appears:

"Senator MORGAN. What was the first work that you did in America for the Panama Canal Company?

"Mr. CROMWELL. I must beg to be excused, Senator, from the pursuit of that subject, as that is a professional confidence.

"Senator MORGAN. Is the fact that you had lawsuits, or gave advice, or anything of that sort a professional secret?

"Mr. CROMWELL. In respect of the business of the Panama Canal Company, our relations are professional and confidential and I must beg to be excused from relating their business."

The question is: "What was the first work that you did in America for the Panama Canal Company?" What is your answer?

Senator HOPKINS. Where is the materiality of that question? It has to be material to the subject-matter that we are considering.

Senator MORGAN. I understand that the committee have passed upon that question. In requiring the witness to answer they have passed upon the question of materiality.

What is your answer, Mr. Cromwell?

Mr. CROMWELL. With all respect to the committee, I must decline to answer the question, as such answer would be a violation of my

professional duty. My knowledge and information about the matter was derived in the course of my professional employment, and solely because of such employment. The answer would oblige me to disclose information affecting the interests of my client derived from professional employment, and would compel me to disclose its private business affairs. The answer would disclose private business matters which are not within the power of the committee to investigate.

In declining to answer, I wish again to state that I do so with the profoundest respect for the committee. As you know, and as is shown by the record of the committee, to which I beg leave to refer, I have been repeatedly examined and have answered innumerable questions. So far as concerns the affairs of the Panama Railroad Company, I have felt that the interests of no private clients were involved, and I have answered most fully and exhaustively. I have not refused to disclose information relevant to the inquiry which the committee has been authorized to make, in so far as it does not involve the disclosure of private business matters.

Senator MORGAN. So you refuse to answer the question?

Mr. CROMWELL. For the reasons I have stated, Senator; yes, sir.

Senator MORGAN. On page 1143 the following statement appears:

"Senator MORGAN. What was the principal work that you first did for the Panama Canal Company in America?

"Mr. CROMWELL. I do not recall what I did at any time in their affairs, and if I did I should not feel at liberty to state their business."

What is your answer to that? What was the principal work that you first did for the Panama Canal Company in America?

Mr. CROMWELL. I make the same reply, sir, with the same explanation.

Senator MORGAN. On the same page of the record, I believe it is, the following statement occurs:

"Senator MORGAN. Did you conduct any business for them in America?

"Mr. CROMWELL. I beg to be excused from a reply to that."

Mr. CROMWELL. I make the same reply, sir, with the same explanation.

Senator CULBERSON. Mr. Chairman, I wish to ask as to the course of procedure. Are you simply going to read these same questions to the witness now and take his answer or his refusal and stop, or as these several questions are propounded, are members of the committee to be permitted to ask any questions? Not that I specially desire to ask any questions, but I want to understand the course of procedure.

The CHAIRMAN. I assume that Senator Morgan intends to go along and read the questions and take the answer or the refusal to answer until he arrives at a certain point in the investigation, and then the matter will be taken up by the committee. I presume that is the intention.

Senator CULBERSON. I want to call attention to these two questions just for a moment, so as to get my idea of it before the committee. The first is, What was the first work you did in America for the Panama Canal Company? The second is, What was the principal work that you first did for the Panama Canal Company in America? The witness declines to answer either of them on the ground that it would require him to divulge the confidential relationship between

him and his client. Of course, the question is now whether this witness shall be the sole judge as to whether it does involve confidential relations. He refuses to state what the first work that he did in America in reference to this matter was. He simply closes his mouth and tells the committee that he can not answer, and apparently the committee is going to accept his judgment as to whether or not it does involve the disclosure of professional confidence.

Senator HOPKINS. Does it not, after all, come back to the proposition that the witness himself is the judge? Suppose the committee differ, however, and say that his objection is not well founded. That does not interfere with his standing by his own objection if he wants to do it.

Senator CULBERSON. I understand; but I am talking for the committee. As members of the committee, if it were made clear to us that these matters did involve confidential relationships and exclusively involve those relations, probably no member of the committee would desire to put himself in the attitude of wanting to compel the witness to answer.

Senator HOPKINS. If you will permit me, I think the questions are immaterial, anyway. I do not think that the Senator has a right to ask the witness those questions under the resolution under which we are conducting our investigations; and in addition to the objections that he makes for himself personally, I think the committee have a right to take exception to it on the ground that they are not material to the subject-matter that we are attempting to investigate and determine.

Senator KITTREDGE. Do I understand that Senator Culberson desires to ask the witness any questions?

Senator CULBERSON. No; I do not make any request of that kind. I simply wanted to know the procedure of the committee, whether or not we were going through these questions, asking the witness whether he will answer, and taking a refusal again to-day, or whether the members of the committee will be permitted to interrogate him with reference to these particular matters as they arise. It seems to be the general intention of the committee to pursue the former course—that is to say, to have these questions read and to have Mr. Cromwell take his action upon them, whether he will answer or decline to answer, and proceed. I have no disposition to interfere with that procedure at all, but I simply wanted to understand what it was.

Senator SIMMONS. If the matter were before a court of justice and the witness sought to plead his protection, I take it that the court would require the witness to show wherein his answer would necessarily involve the disclosure of a confidential relation; and I think Mr. Cromwell, as the questions are asked him, has the right, in addition to the refusal to answer, to show the committee by any statement he sees fit to make that his answer would involve the disclosure of a matter of privilege. If he does not do that, that is his own fault; but it seems to me that the quickest way to get rid of this matter would be to let Senator Morgan ask him all of these questions, and after he has finished asking all these questions Mr. Cromwell can retire and, in executive session, we can decide whether, in our judgment, anyone of the questions are pertinent, and if pertinent whether it appears to us that it would involve a matter of privilege for him to answer them.

Senator HOPKINS. Or whether we will insist on his answering.

Senator SIMMONS. Yes. If we should find that it is pertinent and that it does not involve a matter of privilege, then, of course, we would insist upon his answer, otherwise we would excuse him under the resolution.

Mr. CROMWELL. I wish to say that every communication and every piece of business which I have had at any time for the New Panama Canal Company has been solely in connection with its interests in the new Panama Canal and has been exclusively of a professional character first, last, and all the time.

Senator MORGAN. I do not choose at this table to go into any discussion with the witness, or with even Senators, in open session in regard to the situation that is now presented. I will take the liberty of stating my view of what the law is as it is now presented, and of our rights, duties, and privileges, and the rights and duties and privileges of Mr. Cromwell, the witness.

The law has settled one proposition by statute here, which is, that whatever of recalcitrancy the witness may show in his refusal to answer the questions that are propounded by the committee, he takes upon himself the risk, I will call it, of answering or refusing to answer the questions, and of being subjected to legal procedure, which is provided for particularly in the statute. On several occasions Congress in both branches, the Senate more particularly, I believe, have attempted to impose penalties upon a witness who refused to answer questions, such as imprisonment, etc., fines, and the like of that. That matter was taken up in Congress and a law was passed which provides that when a witness is recalcitrant in answering questions submitted to him by a committee that he shall be turned over, so far as the Senate is concerned, by the President of the Senate on a reported statement to the authorities of the District of Columbia, so that the grand jury shall pass upon the question of the validity and soundness of his privilege, or the reasons that he may have for justifying his refusal to answer.

That is the law of this case. We have no power at all to impose any fine upon Mr. Cromwell, or any imprisonment, or any other punishment in the nature of a contempt proceeding for his refusal to answer questions. That of course would not apply to a different line of conduct on his part, if anything of that sort should ever supervene, or on the part of any other witness; but in the refusal to answer the question he throws himself upon his rights and responsibilities in connection with the law of the land as enacted by Congress. So that when a question is put to him he has the privilege of taking these risks, if they be risks, and saying, "I refuse to answer" or "I still refuse to answer."

The other branch of this question is the question of parliamentary law. I have already adverted to it in the course of our discussions here this morning (in executive session). In the parliamentary practice as set forth in Jefferson's Manual, when the Houses, or a committee of the Houses, or of either House examines a witness and the witness refuses to answer, thereupon the questions are settled, as to the propriety of putting them. Then the witness, after the settlement of the question, is required to answer it; and if he refuses to answer, I have already mentioned what is the power of the law in regard to visiting punishment upon him if his refusal is not justified. These questions have been settled by the vote of this committee. That

includes their pertinency, their relevancy, their propriety in every particular; and in that Mr. Cromwell is reserved the right of asking to be excused from answering either of these questions, which right, of course, will be propounded here upon his statement; and if the committee desired to excuse him, he would be excused; if not, he would not be excused.

So that, acting not voluntarily, but against my wishes, as the Senator designated to propound these questions, I feel that my duty is simply to ask the questions again and let Mr. Cromwell make his refusal to answer, or answer, as he pleases.

That is the whole subject, so far as I understand my duties in connection with this business as the designated Senator to ask these questions.

Senator CULBERSON. Just a word further, Mr. Chairman. I agree, generally, with what the Senator from Alabama has stated. I call attention, however, to the fact that the witness makes a general statement that all he did at any time with reference to the Panama Canal matters was as counsel and that necessarily, therefore, from his standpoint, anything he might divulge to this committee would be a disclosure of a confidential relation between him and his client.

That answer of the witness, which is here before the committee, will go to the proper prosecuting officer of this District, under certain contingencies, and if it is left in that shape, unanswered, unchallenged, you may see the effect of it. Now, this record discloses that the witness is mistaken about that. He has said that he did things other than as counsel. One of my purposes in raising the question is to see how much this particular record here ought to disclose for the benefit of the prosecuting attorney in this District if he should be called upon to act officially upon this record. For instance, upon page 33 of this document that we have here (S. Doc. 457), Mr. Cromwell acts as a subscribing witness to an official record. He can not hide himself behind any proposition as to his being counsel when the question of that record and its authenticity is raised. He must speak as a witness to that paper. If he acted both as witness and as counsel, the fact that he was counsel will not shield him from testifying here as a witness to that record.

Senator HOPKINS. Well, Senator, the record speaks for itself, and there is nothing involved in that paper of a material character.

Senator CULBERSON. I am referring to that particular thing only to show that Mr. Cromwell is mistaken when he says he has acted in no other capacity at any time, through these whole transactions with respect to this canal matter, than as counsel. I only instance that because there are others in this voluminous record carrying out the same idea. I only instance that to show that he acted in that matter as a subscribing witness; and the books are full of authorities to the effect that he can not shield himself from testifying about that paper.

Senator MORGAN. If I may interrupt the Senator from Texas, I would like to say again that we are discussing matters now that have been passed upon by this committee. These questions are all here in print. They are submitted in connection with an argument and statement of facts in their support. The committee have decided that Mr. Cromwell's privilege, so far as the record shows it, does not excuse him from answering these questions. That is decided. Equally the

materiality of the subject-matter inquired about is decided by this action of the committee. Equally the relevancy as to the general subject committed or charged is decided. So that nothing remains for this committee to do at all except to repeat the questions to Mr. Cromwell, as an order of the committee that he shall answer them.

Senator CULBERSON. Very well, Senator. I shall not pursue it any further, then.

Senator MORGAN. Yes; that is all. Then, the other questions, relating to the verity of his statements, and the shelter that he claims of a professional sort, are questions that must be dealt with by the legal authorities of the District of Columbia, not by us.

The CHAIRMAN. Please proceed with your questions, then, Senator Morgan.

Senator MORGAN. Very well.

The next question that you declined to answer is as follows (p. 1143):

"Senator MORGAN. Did you conduct any business for them in America?

"Mr. CROMWELL. I beg to be excused from a reply to that."

Do you still refuse to answer that question?

Mr. CROMWELL. I make the same reply, Senator, with the same explanation as that which I gave in connection with my answer to your first question this morning.

Senator MORGAN. You refuse to answer the question?

Mr. CROMWELL. For the same reason; yes, sir.

Senator MORGAN. The next is (p. 1143):

"Senator MORGAN. What was your salary as general counsel of that company?

"Mr. CROMWELL. I beg to be excused from reply."

Do you refuse to reply?

Mr. CROMWELL. I have answered the question. The context shows that I have already made reply upon that question.

Senator MORGAN. You refuse to reply?

Mr. CROMWELL. Further than I have, yes, sir; in the record of the case, for the same reason and with the same explanation that I have already given in answer to your first question.

Senator MORGAN (reading from same page):

"Senator MORGAN. You do not propose to tell anything about what you did or what you received from that company?

"Mr. CROMWELL. I do not consider myself at liberty to discuss the professional relations of a client."

Did you mean thereby to refuse to tell?

Mr. CROMWELL. I make the same reply, sir, with the same explanation.

Senator MORGAN. Make your reply to that.

Mr. CROMWELL. Yes, sir; the same reply.

Senator MORGAN. You refused to tell, and you still refuse to tell?

Mr. CROMWELL. I make the same reply that I did in the first instance.

Senator MORGAN. No, no. Answer my question directly. You did refuse and you still refuse to reply to that question?

Mr. CROMWELL. I decline to answer, for the reasons already given in respect to my first answer, and with the explanations accompanying it.

Senator MORGAN. Again [reading from same page]:

"Senator MORGAN. You have mentioned already that you received $200,000 from them, and that it was in installments, not annually exactly, but as you called for them. You have mentioned that fact. Was that a professional confidence?

"Mr. CROMWELL. I have mentioned it, sir, out of good nature, perhaps.

"Senator MORGAN. Was that in payment for work that you did in the United States?

"Mr. CROMWELL. I beg to be excused from replying. My service was general and broad, and covered trips to Europe and——"

Did you intend to refuse to answer that question—"Was that payment for work that you did in the United States?"—Was that your intention, to refuse to answer that question?

Mr. CROMWELL. I have already answered, sir, as fully——

Senator MORGAN. That will not do any more. You must answer these questions, and not say: "I have already answered."

Mr. CROMWELL. I decline to answer other than I have already answered.

Senator MORGAN. You refuse to answer that question?

Mr. CROMWELL. I do, sir, with the explanation and statement I have already made in connection with the first answer.

Senator MORGAN (reading from same page):

"Senator MORGAN. Were they paying you for your personal influence upon the United States or the people of the United States and the Congress of the United States, or were they paying you for professional services?

"Mr. CROMWELL. For professional services.

"Senator MORGAN. Exclusively?

"Mr. CROMWELL. Yes, sir.

"Senator MORGAN. And, although you stated that you received $200,000 from them, you decline to state any business that you did for them at all?

"Mr. CROMWELL. I do.

"Senator MORGAN. And you cover that under a professional confidence?

"Mr. CROMWELL. I do; and also because I think this committee has no power to go into such subjects, but that I do not pass upon."

The question was, "Were they paying you for your personal influence upon the United States or the people of the United States and the Congress of the United States, or were they paying you for professional services?" What is your answer to that?

Mr. CROMWELL. My answer is now as it was then.

Senator MORGAN. Exclusively for professional services?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. The next question is (p. 1143).

"Senator MORGAN. And, although you stated that you received $200,000 from them, you decline to state any business that you did for them at all?

"Mr. CROMWELL. I do."

Do you still refuse?

Mr. CROMWELL. Yes, sir; for the same reason, and with the same explanation.

Senator MORGAN. Referring to page 1144 of the record, I read:

"Senator MORGAN. Was your business in any wise connected with the lobbying of measures of the Panama Railroad Company through Congress?

"Mr. CROMWELL. No, sir.

"Senator MORGAN. Or advocating them before committees of Congress?

"Mr. CROMWELL. I have appeared before committees of Congress.

"Senator MORGAN. At the instance of that company?

"Mr. CROMWELL. Yes, sir; as counsel for the company.

"Senator MORGAN. That is one thing that we have got, anyway. Were you paid for that? Have you been, to any extent, and what?

"Mr. CROMWELL. I can not differentiate, Senator, and I must decline to go further into that subject. I have rendered no bill for individual services.

"Senator MORGAN. I did not suppose that you had rendered any bill and I did not ask you if you had. I asked whether or not you had been paid for the service in whole or in part?

"Mr. CROMWELL. I decline to proceed further into the discussion of that topic."

Do you still decline to make answers upon the questions that were then propounded to you, as I have read them?

Mr. CROMWELL. I do, sir; and for the same reasons, and with the same explanation that I stated in answer so fully to the first question that you propounded to me this morning.

Senator MORGAN (reading from page 1145 of the record):

"Senator MORGAN. What arguments or propositions or offers did you make as the counsel of the Panama Canal Company to other persons besides those you addressed to the President of the United States, to the Secretary of State, and to the chairman of the Committee on Interstate and Foreign Commerce of the House?

"Mr. CROMWELL. I decline to answer, on the ground that it is a professional confidence."

Do you still decline on that ground?

Mr. CROMWELL. Yes, sir.

Senator MORGAN. You refuse to answer?

Mr. CROMWELL. Yes, sir; for the same reason, and with the same explanation.

Senator MORGAN. You still refuse?

Mr. CROMWELL. Yes, sir.

Senator MORGAN (reading from page 1146):

"Senator MORGAN. Do you decline to answer in explanation of what you have stated in those written communications?

"Mr. CROMWELL. I do.

"Senator MORGAN. You do?

"Mr. CROMWELL. Yes, sir.

"Senator MORGAN. You will give no explanation of them?

"Mr. CROMWELL. I will not."

Do you still refuse to give any explanation of them?

Mr. CROMWELL. I do, sir; for the same reason, and with the same explanation that I have already given.

Senator MORGAN (reading from same page):

"Senator MORGAN. You seem disposed to treat the subject with contempt. I do not understand that. You had a contract with the

Panama Canal Company which bears date November 21, 1899. Do you recall that contract?

"Mr. CROMWELL. What contract?

"Senator MORGAN. The contract made with the canal company on November 21, 1899.

"Mr. CROMWELL. I do not recall any contract, Senator.

"Senator MORGAN. Do you recall any power of attorney or authorization that they gave to you of that date?

"Mr. CROMWELL. I do not recall it by its date; no, sir. There may have been some instrument that passed at that time, but the date does not identify it to me.

"Senator MORGAN. I will read the first part of it to you to see whether you recall it [reading]:

"'Mr. William Nelson Cromwell is exclusively empowered under the formal agreement with the board of directors of the Compagnie Nouvelis du Canal de Panama (New Panama Canal Company of France) to effect with an American syndicate the Americanization of the Panama Canal Company under the following basis.'

"Do you recall that?

"Mr. CROMWELL. I recall that there was a proposal of that kind.

"Senator MORGAN: That was not made with you as general counsel, was it?

"Mr. CROMWELL. Yes, sir.

"Senator MORGAN. Is that a professional secret?

"Mr. CROMWELL. Yes, sir.

"Senator MORGAN. Unfortunately I shall have to reveal it for you. I will read it. [Reading.]

"AMERICANIZATION OF THE PANAMA CANAL.

"THE PANAMA CANAL COMPANY OF AMERICA.

"Mr. William Nelson Cromwell is exclusively empowered under the formal agreement with the board of directors of the Compagnie Nouvelis du Canal de Panama (New Panama Canal Company of France), to effect with an American syndicate the Americanization of the Panama Canal Company under the following basis:

"*I. American company.*—A new corporation shall be organized under the laws of the State of New York, or New Jersey, or Delaware, under the name of 'The Panama Canal Company of America' (or other title), which company shall have for its principal object the completion, maintenance, and operation of the Panama Canal, and any other object that may tend to the realization of that purpose, as well as such other objects that may be set forth in the articles of incorporation.

"The articles of incorporation shall prescribe that at least three-fourths in number of the entire board of directors shall be citizens of the United States, and that the principal office of the company shall be located in the United States.

"*II. Capitalization.*—Preferred stock, 600,000 shares of $100 each, $60,000,000.

"(*a*) Entitled to preference over the common stock in dividends which may be declared in any year to the extent of 5 per cent; and also entitled to participate pro rata with the common stock in all divi-

dends which may be declared in any year in excess of 5 per cent upon the preferred stock and 5 per cent upon the common stock.

"(*b*) Entitled to preference over the common stock, to the extent of the par value thereof, upon liquidation of the company.

"Common stock, 450,000 shares of $100 each, $45,000,000.

"The common stock, subject to the aforesaid preferences in respect of the preferred stock, is entitled to the dividends which may be declared in any year to the extent of 5 per cent; and also is entitled to participate pro rata with the preferred stock in all dividends which may be declared in any year in excess of 5 per cent upon the preferred stock and 5 per cent upon the stock.

"*III. Both classes of stock shall have like voting powers.*—The American company, in consideration of $100,000,000 (of which $55,000,000 shall be paid in such preferred stock and $45,000,000 in such common stock), will purchase and acquire from Mr. Cromwell, or his nominees:

"(*a*) The Panama Canal and concessions (and all existing deposits under such concessions), including all the canal works, plant, machinery, buildings, and all other real and personal fixed and movable property upon the Isthmus of Panama belonging to the Compagnie Nouvelle du Canal de Panama (the French company), or in which the latter may be interested; all plans, surveys, reports, data, and records pertaining to the canal; also all lands ceded gratuitously by the Colombian Government under paragraphs 7 and 8 of Article I of the concessions necessary for the requirement of the construction and operation of the canal. (The subsidy lands granted by Article IV of the concessions and not upon the line of the canal are exempted from this transaction.)

"(*b*) The American company will also acquire the rights of every nature belonging to the French company in the 68,534 shares of stock (out of the total issue of 70,000) of the Panama Railroad Company, a corporation created in 1849 under special act of the legislature of the State of New York.

"These railroad shares are to become the absolute property of the American company upon the completion of the canal, without any further payment whatever. In the meantime they will continue to be held in trust (as at present is the case in respect to the French company) to abide the fulfillment of said condition.

"(*c*) The American company also shall receive $5,000,000 in cash as a part of this transaction.

"(*d*) The American company also will have $5,000,000 preferred stock remaining in its hands for future sale.

"*IV. Absolute title to property and freedom from mortgage sale.*—The title of the American company to the property and concessions so to be acquired shall be absolute (subject to said provisions as to said Panama Railroad Company stock), and such property and concessions shall be free and clear of any mortgage or other lien.

"All money payments and deposits (amounting to many millions of francs) required by the concessions to be made to the Republic of Colombia have been made to date and the concessions are in full force. A large portion of the canal works is already constructed, and it is not doubted that the period (October, 1904) fixed by the concessions for the entire completion of the canal will be extended by Colombia in due course (as on each previous occasion) for such further period as may be found necessary, and that Colombia will thus continue to further the

undertaking which is of such vast concern to its national and commercial welfare.

"*V. Provision for completion of canal by bond issue.*—The board of directors shall be empowered to create, issue, and sell bonds, secured by mortgage or mortgages upon all the canal property, concessions, etc., of the American company, acquired and to be acquired; and also to determine the amount of such bond issues, the rate of interest upon such bonds, and the conditions and price of issue. To comply with the requirements of the charter of the French company, there shall be accorded to the shareholders and bondholders of the 'Universal Interoceanic Canal Company in Liquidation' (the original French company) a right of preference to subscribe for one-half in amount of such bonds.

"*VI. Twenty-two million five hundred thousand dollars common stock trust.*—Agreeably to the requirements of the syndicate, a trust shall be established by Mr. Cromwell or his nominees, in respect of $22,500,000 par value of the shares of the common stock acquired by him or them, or in respect of trust certificates for such shares. The shares or trust certificates (and all dividends thereon) embraced in said trust (*a*) may be disposed of by the trustees for the best interests of said certificate holders or shareholders and of the other stockholders of the American company, at such time and in such manner, under such conditions, and to such ends as they may deem advisable; and (*b*) upon the termination of the trust the shares or trust certificates and moneys then in hand shall be distributed for the best interests of such certificate holders or shareholders and the other stockholders of the American company, at such time, in such manner, under such conditions, and to such ends as the trustees may deem advisable; and in the meantime such share or trust certificates may, by the trustees, be voted for the election of such board of directors of the American company and for such acts and measures as they deem to the best interests of the syndicate and of the stockholders of the American company.

"The trustees shall be five in number; a majority shall be citizens of the United States; of said trustees, two citizens of the United States shall be designated in the first instance by the advisory committee, and the vacancies in respect of two such memberships shall be filled by the holders (acting by and through a majority in interest) of the shares of the trust certificates purchased by the syndicate.

"This trust shall continue until ten years after the opening of the canal to commerce unless sooner terminated pursuant to the terms of the contract or trust covering the subject.

"*VII. Guaranty to American syndicate of full minority representation in directory of American company.*—Agreeably to the requirements of the syndicate, provision shall be made whereby the holders of the shares or trust certificates purchased by the syndicate shall be entitled to designate and cause to be elected the full minority (to wit, one less than a majority) of the members composing the board of directors of the American company until ten years after the opening of the canal to commerce unless such right be sooner terminated pursuant to the terms of the contract or trust covering the subject. Such minority shall, in the first instance, be designated by the advisory committee, and thereafter by such holders of shares or trust certificates, acting by and through a majority in interest of such holders; and all nominees of such holders or advisory board committee shall be citizens of the United States.

"*VIII. Execution of plan.*—It is understood that the articles of incorporation, by-laws, trust deeds, contracts, and other instruments requisite for the accomplishment of the plan are necessarily subject to the approval of the French company, upon the acceptance by it of stock in payment from Mr. Cromwell, or his nominees; and it is also recognized that the unique character of the enterprise, the international interests involved, and the special circumstance of the case require that plenary discretion and power be possessed by Mr. Cromwell to effect the Americanization of the canal.

"It is therefore understood and agreed that Mr. Cromwell may proceed to negotiate, determine, and agree upon all plans, terms, agreements, conditions, questions, and details which he may deem necessary and advisable in respect of the purposes herein generally indicated, including the terms and provisions of all trusts and agreements which he may deem advisable to have established or made; the articles of incorporation and by-laws of the American company, which may include adequate provisions for the redemption and retirement of the capital stock, any merger, consolidation, reincorporation, dissolution, or other disposition, arrangement, or rearrangement of all or any of the property capitalization and concerns of the company upon any consideration approved by the board of directors and the holders of the specified proportion (not less than two-thirds) of the capital stock of the company outstanding at the time being, all titles, property, and tranfers, all stock issues and trust certificate issues, and every other subject or matter which he may consider to be involved in the execution of the plan, and his action in any such regard shall be and become part hereof as if herein set forth; and, further, that he and any member of the advisory committee and counsel, like others, may become a subscriber to the syndicate agreement and be eligible to any trusteeship or directorate, and may occupy any official or personal relation to said enterprise without accountability for any benefit derived therefrom.

"All the terms and provisions of this plan may be carried out by contracts, trusts, or other legal methods, and certificates for shares of such stock or negotiable certificates of trust or other evidence of interest (daily registered with a trust company in the city of New York) shall be issued and delivered by the syndicate subscribers.

"*IX. Advisory committee and counsel.*—Messrs. ——— ———, ——— ——— are constituted an advisory committee of the syndicate subscribers with the professional assistance of Messrs. Sullivan & Cromwell and Mr. ———, as counsel, to possess and exercise the powers specified in Division VI and VII hereof and to advise with Mr. Cromwell in the execution of the plan. The reasonable charges and expenses of said committee shall be discharged by the trustees of the stock trust to be created under Division VI hereof.

"Dated November 21, 1899.

"Americanization of the Panama Canal.

"Syndicate subscription agreement, $5,000,000.

"Referring to the foregoing plan, we, the undersigned, each for himself and not for the other, in consideration of $1 to each of us in hand paid by William Nelson Cromwell, the receipt whereof is hereby acknowledged, and of our mutual subscriptions, do hereby severally subscribe for, and do agree with said William Nelson Cromwell to purchase and from him to take—

"One hundred dollars par value of the preferred capital stock, or, at his option, negotiable preferred-stock trust certificates for all or

any part thereof; and $200 par value of the common capital stock, or, at his option, negotiable common-stock trust certificates for all or any part thereof, issued in respect of capital stock of the American corporation to be created under the foregoing plan.

"For each $100 in money, to the amount set opposite our respective names, and to pay for the same upon the call of the said William Nelson Cromwell, provided such call be not made prior to February 1, 1900, and fifteen days' notice be given of such call.

"Payments shall be made to ——— Trust Company, in the city of New York, and shall by it be paid over to the American company upon the order of Mr. Cromwell against the receipt of such trust company from him for account of the subscribers of the stock or trust certificates purchased by them hereunder.

"It is understood and agreed that this agreement shall not be binding unless subscriptions be made and allotted to the full amount of $5,000,000, and that owing to the special circumstances of the case and in the interests of all, Mr. Cromwell shall have the right and power to reject or to reduce any subscription hereunder at any time before final allotment by him, and also that he may deliver certificates for the shares of such stock or trust certificates to any extent within the respective classes of preferred and common stock or trust certificates that he may find desirable.

"This agreement shall bind, and is for the benefit of the parties hereto and their respective executors, administrators, survivors, and assigns, and may be executed in several parts or copies with the same force and effect as if all the subscription agreements were to be one part or one copy thereof.

"Dated November 21, 1899."

"Senator MORGAN. Did you prepare that paper?

"Mr. CROMWELL. I decline to answer.

"Senator MORGAN. On what ground?

"Mr. CROMWELL. On the ground that it is a professional communication.

"Senator MORGAN. I will read this first paragraph again:

"'Mr. William Nelson Cromwell is exclusively empowered under the formal agreement with the board of directors of the Compagnie Nouvelle du Canal de Panama (New Panama Canal Company, of France), to effect with an American syndicate the Americanization of the Panama Canal Company under the following basis.'

"Mr. CROMWELL. That was a fruitless suggestion of the company which came to naught and under which I acted as their counsel solely. For that reason I decline to enter into a discussion of it any more than I would into any other affair of theirs.

"Senator MORGAN. You put it upon the ground that it was a professional arrangement with that company?

"Mr. CROMWELL. Yes, sir.

"Senator MORGAN. Well, if so, why do you stipulate in this proposition that William Nelson Cromwell shall receive the fees that were coming in consequence of any legal services?

"Mr. CROMWELL. It does not say so.

"Senator MORGAN. Well, what does it say then? I will see.

"The CHAIRMAN. Is that paper signed? I did not hear any signatures read. Are there any signatures attached to that paper?

"Senator MORGAN. No, sir; there are no signatures to it, and none needed when a party swears that he executed such a contract.

"Mr. CROMWELL. It is not a contract; it is an abortive project."

Do you still decline to answer the question, "Did you prepare that paper?" after you have heard what you testified to before?

Mr. CROMWELL. I do, sir; for the same reasons and with the same explanation that I have given in connection with my answer to your first question.

Senator MORGAN (reading):

"Mr. CROMWELL. Nothing was ever done under it.

"Senator KITTREDGE. Senator Morgan, have you asked the one question that you desired to ask before answering the question that I suggested?

"Senator MORGAN. I had read that to him, and he had made a statement in regard to it.

"Have you a copy of the 'agreement with the board of directors of the New Panama Canal Company to effect with an American syndicate the Americanization of the Panama Canal Company upon the following basis?'

"Have you a copy of that agreement?

"Mr. CROMWELL. I beg to be excused from pursuing that subject, because it involves confidential and professional relations. I do not wish to be impolite, and I do not wish to be constantly making the statement that may seem a little harsh; but I say, once and for all, that all these matters are confidential."

Do you still refuse to answer the questions propounded to you in those interrogatories?

Mr. CROMWELL. I do, sir; for the same reasons and with the same explanation as already given.

Senator MORGAN. Do you refuse to answer?

Mr. CROMWELL. I said I do, sir; make the same reply, upon the same ground set forth at length in my reply to your first question today, which I herein adopt in full.

Senator MORGAN. On page 1157 of the record is the following:

"Senator MORGAN. Mr. Cromwell, yesterday in speaking of a paper that is in the record, concluding on page 1150 of this testimony, you say of that paper:

"'It is not a contract. It is a power of attorney to me, as general counsel of the company, written in my name, to accompany broad plans which the board of directors considered. It never matured into anything. It never was consummated, either by subscription or by assent, and it is obsolete and an impracticable thing—proved so to be. It has no life or force of being, did not exist, and never has existed, and is as dead as a doornail.'

"Was it ever signed?

"Mr. CROMWELL. I will make, Senator, the same reply I have heretofore.

"Senator MORGAN. What is that?

"Mr. CROMWELL. That the whole subject is covered by the seal of professional confidence.

"Senator MORGAN. How long would that professional lockjaw last—from the time you were first employed down to this date?

"Mr. CROMWELL. It exists now.

"Senator MORGAN. When did it begin?

"Mr. CROMWELL. It began with my employment and continues now.

"Senator MORGAN. When was that? When was the employment?

"Mr. CROMWELL. When was my employment by the New Panama Canal Company?

"Senator MORGAN. Yes, sir.

"Mr. CROMWELL. In 1896.

"Senator MORGAN. And this is 1906. You apply that cloture to all questions asked of you in regard to all of your transactions from that time to this in connection with that company, do you?

"Mr. CROMWELL. I do, sir."

Hearing the question again, from what I have read to you, do you still refuse to answer the questions propounded to you in these interrogatories?

Mr. CROMWELL. I do, sir; for the same reasons and with the same explanation which accompanies my reply to the first question.

Senator KITTREDGE. It is now 12 o'clock, Mr. Chairman.

Senator MORGAN. Then we will have to adjourn.

Mr. CROMWELL. May I be permitted to make a suggestion? If I could in any way assist the committee by considering these questions as read, and the same answer as made——

Senator MORGAN. No; I do not choose to take it that way, and the committee can not do so, because you might want to be excused from some of them.

(After an informal discussion as to when the next meeting should be held, the committee adjourned until Tuesday, June 26, 1906, at 10.30 o'clock a. m.)

ISTHMIAN CANAL.

UNITED STATES SENATE,
COMMITTEE ON INTEROCEANIC CANALS,
Washington, D. C., Tuesday, January 22, 1907.

The committee met at 10.30 o'clock a. m.

Present: Senators Millard (chairman), Knox, Kittredge, Ankeny, Morgan, Carmack, Taliaferro, Simmons, and Culberson.

The committee met in executive session and, upon motion of Senator Culberson, seconded by Senator Taliaferro, the committee voted to have printed in the record of the hearings the following correspondence relating to the alleged basis of rumors in regard to the results of recent borings on the site of the proposed locks at Gatun, etc.:

UNITED STATES SENATE,
COMMITTEE ON INTEROCEANIC CANALS,
Washington, D. C., January 8, 1907.

DEAR SIR: At a meeting of the committee held this morning it was reported by one of the members that the borings for the locks at Gatun and on the Pacific side of the Culebra cut had been found unsatisfactory, and that the proposed lock on the Pacific side had been changed some 2 or 3 miles from the original point designated. It has also been reported that the borings at Gatun were found to be very unsatisfactory, and it is the desire of the committee that before Tuesday morning next (when our regular meeting will be held) you give us full information in regard to the borings at this point, and also any other borings that may have been had during the past year. It is the wish of the committee that this be as full and complete as possible, as the rumor seems to indicate that at Gatun especially the conditions have been found very unfavorable.

Respectfully, yours,

J. H. MILLARD, *Chairman.*

Hon. THEODORE P. SHONTS,
Chairman Isthmian Canal Commission, Washington, D. C.

ISTHMIAN CANAL AFFAIRS,
OFFICE OF ADMINISTRATION, PANAMA CANAL BUILDING,
Washington, D. C., January, 14, 1907.

SIR: I have the honor to acknowledge the receipt of your letter of January 8, stating that at a meeting held that date one of the members of your committee reported that the borings for the Gatun locks and for the locks on the Pacific side had been found very unsatisfactory, and that the Pacific locks had been changed 2 or 3 miles from

the original location, and requesting complete information relative to borings before the next meeting of the committee, to be held Tuesday morning, January 15.

I have caused to be prepared by those members of the engineering committee of the Commission now in Washington (Messrs. Endicott, Hains, and Harrod) a statement with respect to the inquiries set forth in your letter, and transmit the same to you herewith.

In order, however, that you might be advised of the results of all borings and investigations of a later date than those of which the engineering committee was advised, which included all those up to the time of its latest visit to the Isthmus in November last, a cable was sent to the chief engineer, Mr. Stevens, requesting that he advise me of the result of all borings to date, to which the following reply has been received:

One hundred and twenty-seven holes have been bored at Gatun lock site, covering area 1,200 by 5,000 feet. All carried well below bottom lock walls, and 66 to depth of 50 feet or more below sea level, and all show that lock walls will rest on firm and suitable soft rock. Thirty-six borings made covering area of controlling gates for spillway. All show safe foundation in soft rock. Three lines of borings, 63 in number, all extending to rock, have been made across valley Chagres, covering dam site. Pervious material in only four holes, and these below 200 feet. Pedro Miguel lock walls: Ten borings have been made below foundations, all showing rock suitable for foundations. Test pits Gatun and Pedro Miguel so far all show harder material than cores from borings.

While the report of the members of the engineering committee and the cable from Mr. Stevens relate primarily to the lock sites, your attention is called, nevertheless, to the statement that "there is nothing in the later examinations made affecting the practicability or permanence of the Gatun dam."

Very respectfully,

T. P. SHONTS, *Chairman.*

Hon. J. H. MILLARD,
Chairman Committee on Interoceanic Canals,
United States Senate.

P. S.—It is requested that, if practicable, the blueprints transmitted herewith be returned after they shall have served your purpose, as they are nearly all made from tracings on the Isthmus, and therefore would require considerable time to be replaced.

T. P. S.

ISTHMIAN CANAL COMMISSION,
Washington, D. C., January 12, 1907.

DEAR SIR: In compliance with the request of Senator J. H. Millard, chairman Senate Committee on Interoceanic Canals, of date January 8, 1907, referred to the engineering committee, it has the honor to transmit the following information concerning the borings at Gatun, accompanied by plans of all borings that have been made heretofore. This information is as full and complete as possible, including everything bearing on the subject of the Senator's letter which is on file in this office.

No. 1.—Blueprint showing locations of borings on lock site and dam site at Gatun.

No. 2.—Blueprint showing borings additional to those on sheet No. 1.

No. 3.—Blueprint showing profiles of borings on or near the axis of the Gatun dam.

No. 4.—Blueprint showing location of borings for the Gatun lock site, and the axis of the location adopted for the lock.

No. 5. Series of six blueprints showing profiles on boring lines to develop the lock site at Gatun.

Nos. 6 and 7.—Blueprints showing borings on cross sectional lines through the lock site and the relative position of the lock walls.

No. 8.—Blueprint showing the stratification of material and the top of lock wall and level of lock floor on a profile along the axis of the locks, and also profiles on parallel lines 170 feet east and west of the axis of the locks.

The Commission at its meeting on November 20, 1906, directed the continuance of examinations to furnish information for the designing of locks, by sinking test pits under the lock walls, and the testing of block samples from these pits, to determine the bearing power of the material and other physical characteristics.

The materials disclosed by the observations of the strata underlying the lock site show, below the surface soil, either what is denominated by the engineers in the field as "indurated clay" or "chopped sand and clay." These terms may be misleading. The chopped material is different from the "indurated clay" and seems to be a sort of hardpan or conglomerate, either of which will make a good foundation. Referring to the physical, and not to the geological character of these formations, the "indurated clay" has a rock-like consistency which resists compression and erosion, and makes an entirely satisfactory foundation for the proposed lock structures. This is established by the borings and by the exposure of the material in the French work at the dry dock at Cristobal.

By the term "chopped," in connection with the other material, is designated the method found most rapid and economical in penetrating it with boring tools. While a diamond drill was used in the so-called "indurated clay," a chopping bit was found most useful in the other material. It could have been taken out in cores by a diamond drill, and, in fact, this process was used at times. The terms are not intended to convey an impression of the value of their physical properties for a lock foundation. An opinion of the relative values of the two materials for foundation purposes is expressed in correspondence by Mr. Stevens, chief engineer, as follows:

It will be noted that under the so-called indurated clay in cross sections 1, 2, and 3 exists what is called blue clay and sand—clay, gravel, and fine sand, etc. This material, while not so hard as the so-called indurated clay, is in every respect an equally good and sufficient foundation in my opinion for the locks or a structure of any weight or importance. In fact, if there were not a particle of indurated clay in Gatun Hill I would not have the slightest hesitancy in founding the whole structure on this material.

I beg in this connection to inclose under separate cover a sample of this material, which was taken as a core from the borings as it is found in cross section 1 as the material underlying the indurated clay, and I think you will agree with me that there is no doubt whatever as to its character for foundation purposes. I believe it is as good as indurated clay and good enough in any case.

We know of no foundation for the report "that the proposed lock on the Pacific side has been changed some 2 or 3 miles from the original point designated." The locks, both at Pedro Miguel and Sosa, occupy substantially the sites chosen by the minority of the advisory board. These locations were necessarily general. When special examinations were made, it was found that the rock foundation for the

locks at Pedro Miguel did not extend over the entire area covered by the structure, and a slight shifting of their position may be advisable, but there have been no other changes contemplated.

In conclusion, we state that the investigations which the Commission has continued have thus far led to no disclosure of extraordinary difficulties requiring changes of previous plans. The continuation of surveys has for its object the complete adaptation of the design of locks and other features of the plan to the existing surface and subsurface conditions.

There is nothing in the later examinations made affecting the practicability or permanence of the Gatun dam.

Very respectfully,

MORDECAI T. ENDICOTT,
Chairman Engineering Committee.

T. P. SHONTS,
Chairman Isthmian Canal Commission.

ISTHMIAN CANAL AFFAIRS,
OFFICE OF ADMINISTRATION, PANAMA CANAL BUILDING,
Washington, D. C., January 22, 1907.

SIR: In further reply to your letter of January 8, 1907, requesting complete information relative to borings upon the Gatun and Pedro Miguel lock sites, I beg to forward herewith a copy of a letter from the chief engineer, Mr. John F. Stevens, under date of January 12, 1907, reporting more fully upon the subject of your inquiry than in his cable of the same date, which I laid before you in my letter of the 14th instant.

It will be seen that this report confirms fully, after further study of the examinations, the data and conclusions given in his cable with respect to the Gatun and Pedro Miguel lock foundations. It further reports a series of 36 borings extending to or below sea level upon the site proposed for the Gatun dam spillway, with the most satisfactory developments.

Your attention is also called to that portion of the report relating to examinations across the valley of the Chagres, upon the lines of the dam, and the satisfactory indications set forth, as bearing upon the successful founding of that structure.

I shall take pleasure in forwarding to you promptly further reports and data upon these investigations as they come to hand.

Very respectfully,

T. P. SHONTS, *Chairman.*

Hon. J. H. MILLARD,
Chairman Senate Committee on Interoceanic Canals.

ISTHMIAN CANAL COMMISSION,
DEPARTMENT OF CONSTRUCTION AND ENGINEERING,
Culebra, January 12, 1907.

SIR: I beg to acknowledge receipt of your cable of January 9, reading as follows:

Cable, for information Senate Committee on Interoceanic Canals, statement of results all borings and examinations at Gatun dam and lock site and Pedro Miguel lock site. Must have statement this week, but desire you follow cable with greater details by mail.

I have cabled you to-day a long reply, and beg leave to confirm by letter as follows:

We have taken time to go over again very carefully all of the borings made both at Gatun and Pedro Miguel, and the result, from my point of view and my engineers, who have carefully watched the work of exploration personally from its inception down to the present time, is as follows:

One hundred and twenty-seven holes have been bored on the site of the locks at Gatun, these borings covering an area of 1,200 feet wide and 4,200 feet long, and show conclusively, in our opinion, that it is possible to build three duplicate locks, this area having usable dimensions of 100 by 1,000 feet, with foundations for the lock walls at all points supported on a firm and suitable soft rock.

All of these holes have been carried well below the bottom of the lock walls, and 66 have been extended to a depth of 50 feet or more below sea level.

On the site of the proposed spillway 36 test bore holes have been put down, covering the whole area to be included by the controlling gates on the walls.

All of these 36 borings extend to or below sea level and indicate a good and sufficient foundation in soft rock.

We have now completed three parallel lines of test bore holes, 63 in number, across the whole width of the valley of the Chagres to be closed by the dam, all of these extending down to rock, and all of them are what are known as dry holes.

Pervious material, or material which can possibly be penetrated by water, has been found in only 4 of these 63 holes, and this only at depths of 200 feet below perfectly impervious soil. In other words, there is a 200-foot blanket of impervious soil found at these bore holes before any pervious material is encountered.

At the site of the proposed locks at Pedro Miguel 10 borings, distributed over an area bounded by the lock walls, 2,000 feet long, have been bored to below the bottom of the lock walls, and all show that the foundations of these walls will be in rock of varying hardness and perfectly suitable for foundations.

It is possible that some of these foundations at Pedro Miguel, if exposed to the heavy action of the weather, would wear away, and it would probably be necessary to cover the floor of the lock chamber with concrete, when, of course, it would be impossible for water, weather, or anything else to have any action upon it.

One test pit which we are putting down at Pedro Miguel has just about reached the bottom of the lock walls, and we are in a firm blue soft rock somewhat like that found at Gatun, which is certain to make a firm foundation and a perfectly safe one.

At Gatun the test holes which we are putting down 6 by 8 feet we are hardly able to excavate more than 1 foot per day of ten hours, and all of them have to be drilled and blasted.

We are still in this rock material, and the test pits, so far as dug, both at Gatun and Pedro Miguel, indicate the same material as found in the bore holes, excepting that in the test pits this material is harder than as indicated by the small cores which were taken out of the bore holes.

I do not know that I can give any more information than to answer your request and further add that the results of our continued ex-

plorations only confirm my previous judgment that we have ample, sufficient, and perfectly safe foundations at all lock sites; and were I personally paying for the canal, I would have no hesitancy in recommending in strongest terms the construction of the locks on the sites selected.

Truly, yours,

JOHN F. STEVENS,
Chief Engineer.

Mr. T. P. SHONTS,
Chairman Isthmian Canal Commission, Washington.

ISTHMIAN CANAL.

COMMITTEE ON INTEROCEANIC CANALS,
UNITED STATES SENATE,
Washington, D. C., Tuesday, February 12, 1907.

The committee met at 10.30 o'clock a. m.

Present: Senators Millard (chairman), Kittredge, Hopkins, Ankeny, Carmack, and Culberson.

Present, also, Hon. William H. Taft, Secretary of War; Theodore P. Shonts, esq., chairman of the Isthmian Canal Commission, and R. R. Rogers, esq., general counsel of the Isthmian Canal Commission.

STATEMENT OF R. R. ROGERS, ESQ., GENERAL COUNSEL OF THE ISTHMIAN CANAL COMMISSION.

Senator KITTREDGE. As I understand, Mr. Rogers, the authority to make this contract is based upon section 5 of the Spooner Act?

Mr. ROGERS. Yes.

Senator KITTREDGE. And that reads as follows:

SEC. 5. That the sum of ten million dollars is hereby appropriated, out of any money in the Treasury not otherwise appropriated, toward the project herein contemplated by either route so selected.

And the President is hereby authorized to cause to be entered into such contract or contracts as may be deemed necessary for the proper excavation, construction, completion, and defense of said canal, harbors, and defenses, by the route finally determined upon under the provisions of this act. Appropriations therefor shall from time to time be hereafter made, not to exceed in the aggregate the additional sum of one hundred and thirty-five millions of dollars, should the Panama route be adopted, or one hundred and eighty millions of dollars should the Nicaragua route be adopted.

Since that time there has been appropriated $10,000,000 to pay the Republic of Panama for the rights we acquired from that Government; in December, 1905, $11,500,000, as I recollect; about April, 1906, a further sum of $5,000,000; and in the sundry civil bill a further sum of $25,000,000 was appropriated. Have I the figures accurately in mind?

Mr. SHONTS. That is my recollection.

Mr. ROGERS. That is fifty-one millions and a half.

Senator KITTREDGE. Yes. One point I would like to have you take up (taking your own time to speak of it) is, What authority, if any, has the Commission to enter into a contract where the amount to be paid by the Government exceeds the sum of $135,000,000, less the $51,500,000?

Mr. ROGERS. The total appropriation is $145,000,000, including the $10,000,000 originally appropriated in section 5, which you have read.

Senator KITTREDGE. This section 5 authorized the appropriation of $135,000,000, in addition to the $10,000,000.

Mr. ROGERS. Yes; making $145,000,000 altogether.

Senator KITTREDGE. No; that was appropriated and gone.

Mr. ROGERS. Yes.

Senator KITTREDGE. Then there was authority under this act for $135,000,000 more. Now, since that time there has been appropriated $51,500,000—is that right—leaving a balance——

Mr. ROGERS. I understand that the $51,500,000 leaves a balance of about $95,000,000 yet to be appropriated.

Senator KITTREDGE. That is a matter of mathematics.

Mr. ROGERS. Yes.

Senator KITTREDGE. The first point (as I suggested a moment ago) that I wish you to advise us upon is, What authority, if any, has the Canal Commission to enter into a contract in excess of the $95,000,000, if that is the correct balance?

Mr. ROGERS. We never contemplated entering into any contract which would exceed that appropriation. The President was charged under this act with the duty of constructing a canal, and he could do it either by direct labor or by contract. That seems to be the primary duty imposed upon the President. The Commission have selected plans which, it is believed, will bring the construction of the canal under the aggregate appropriation provided for by this section, and we believe that by putting out a contract the cost of construction can be made less than if it were done by direct labor. We have no means of knowing at the present time that the fact that this contract is going to be entered into will make the aggregate cost of the canal exceed the $145,000,000.

Senator KITTREDGE. Where do you get your $145,000,000?

Mr. ROGERS. There is $10,000,000 and $135,000,000 that would be the aggregate cost of the canal.

Senator KITTREDGE. The $10,000,000 has gone.

Mr. ROGERS. I know it has gone.

Senator KITTREDGE. So that it leaves $135,000,000, less $51,500,000.

Mr. ROGERS. Well, whatever balance is left out of the original appropriation of $10,000,000, with the additional $135,000,000, we hope will be sufficient to complete the canal under the form of contract which we now propose, and we have no means of knowing that it will exceed that amount; nor is it certain that that method would make it exceed it, whereas if we proceed to the construction of the canal by direct labor it would fall below it.

Senator KITTREDGE. I repeat again that what I would especially like to know is whether, in your judgment, there is any authority in the Commission to enter into any contract which will call for the payment of money in excess of whatever difference there may be?

Mr. ROGERS. I looked that question up under the decisions of the Comptrollers, and, as I understood it, it was held, with respect to some other contracts of a somewhat similar character, that the possibility that the ultimate cost of the work might exceed an authorized appropriation would not render the contracts invalid, nor would it deprive the Government of the right of endeavoring to carry out the public work in whatever form seemed to be best adapted to that end. We have considered that question quite carefully, and we can not figure that the cost of carrying out the contract which we now propose to enter into, added to the expenditure heretofore made by the Government, will exceed the $135,000,000. It is possible that it may do so. If it does, it seems to us that the situation will be like any other case where Congress in advance has underestimated the cost of a pub-

lic improvement, and there would be a deficiency which would have to be provided for or else the work would have to stop.

Senator KITTREDGE. In regard to the cost under this contract, that is to be estimated?

Mr. ROGERS. Yes.

Senator KITTREDGE. As yet nothing has been determined in the way of even an estimate of the cost?

Mr. ROGERS. No; because under the provisions of the contract that estimate can only be made after the contract is signed and entered into.

Senator KITTREDGE. Now, let me see if I understand correctly how that estimate is to be determined. Under this contract, as proposed, a commission of five engineers is to be created, two appointed by the contractor and two by the Government, with the chief engineer as the fifth man. They are to estimate the cost in time and money for the completion of this work. Am I right about that?

Mr. ROGERS. Yes.

Senator KITTREDGE. The compensation of the contractor is to be a certain percentage of the estimated cost, to be increased if the work completed costs less in time and money than estimated, to be reduced by certain amounts if it costs more in time and money, provided that the aggregate loss to the contractor shall not exceed $3,000,000. Is that it?

Mr. ROGERS. Yes; and his percentage.

Senator KITTREDGE. It is the amount of the bond, is it not?

Mr. ROGERS. Yes; three millions of dollars in addition to the percentage and premiums otherwise payable to the contractor.

Senator KITTREDGE. I am right in that, am I?

Mr. ROGERS. That general statement is correct; yes, sir. There are some details there, but the general statement is exact.

Senator KITTREDGE. Yes. So that as yet there is no information possible to be given to this committee or to Congress regarding even the estimated cost of the completion of the work. Is that right?

Mr. ROGERS. That is right.

Senator KITTREDGE. And is or is not the contractor, in law, simply an agent of the Government, receiving compensation in the manner I have in general terms indicated?

Mr. ROGERS. We have always thought that his position was more than that of a mere agent of the Government; that he really occupied, on account of certain obligations that he assumed, the position of an independent contractor. There is a certain element of agency which pervades the contract; but there is, upon the other side, a certain degree of responsibility which the contractor is required to assume which gives him the dignity of an independent contractor with respect to the Government.

Senator KITTREDGE. There is another proposition I should like to have you bear in mind. As I recollect, there is one article of this contract dealing with the question of liability for negligence. Do you remember what that article is?

Mr. ROGERS. Yes. [Examining papers.]

Senator KITTREDGE. It is not necessary to get it now. As I recollect it, the Government, under this contract, is to bear a certain percentage of all damages that may be recovered on account of negli-

gence in the prosecution of this work. That is correct as a general statement, is it?

Mr. ROGERS. It refers to personal-injury claims against the contractor for the negligence of his employees.

Senator KITTREDGE. That is what I mean. On what theory is it that the Government is to be made liable for damages of that sort? There is, as you know, no provision of law authorizing the recovery of damages of that sort against the United States.

Mr. ROGERS. That is true.

Senator KITTREDGE. Now, I say that I have stated some of the general features that I would like to have you tell us about.

Mr. ROGERS. I will take up first the point that you have last raised. As the contract was originally drawn, the contractor was required to assume the entire responsibility of meeting claims due to personal injuries sustained at his hands, by his own employees or by others. That clause aroused—I will not say opposition among the contractors with whom we had repeated conferences, but it brought home to us the fact that if some concession was not made upon that point the Government would have to pay for those personal-injury claims many times over in the form of enhanced bids which the contractors would otherwise submit.

We have made a careful study of the law prevailing upon the Isthmus with regard to torts. The law is quite favorable to the employer. To illustrate: The courts there have held that under the Spanish substantive law, which is now in force in the Canal Zone, the master undergoes no liability in case of injury sustained at the hands of his employees where those employees exceed their specific directions or instructions; and that ruling, you will readily perceive, eliminates a large portion of the doctrine of respondiat superior which prevails in this country. And from my own experience in court with respect to personal-injury claims—and I had a rather large experience in that regard before I came with the Commission—I should say that the application of that doctrine in the United States would throw out of court not less than two-thirds of the personal-injury claims that are usually brought in this country.

The judges upon the Isthmus have also held——

Senator HOPKINS. Right there, I want you to make yourself a little clearer on that point. My mind does not agree with yours on that point. Perhaps I did not understand you. Do you say that in this country the employer is liable where the employee commits the tort outside of the line of his employment?

Mr. ROGERS. No; not outside of the scope of his employment; but when he commits a tort even in violation of general instructions, he is responsible.

Senator HOPKINS. But in the line of his duty?

Mr. ROGERS. Yes; in the line of his duty.

Senator HOPKINS. Oh, yes; I did not understand you.

Mr. ROGERS. Down there they have held that even though the tort is committed within the scope of the person's employment, direct or implied, nevertheless, if he violates general instructions, the negligence is entirely that of the employee; and, the negligence of the master in no way entering into and making a part of the negligence of the employee, the master is not responsible. They have held that with respect, for example, to an engineer violating orders and occasion-

ing a wreck. In the United States that would clearly give a cause of action against the master.

Senator HOPKINS. It would not in all of the States. Some of the courts hold, you know, that an employer is not liable for the negligence of a coemployee.

Mr. ROGERS. Well, that is a special rule; that is one of the risks which is assumed by an employee in many States of the Union—that is, the negligence of a coemployee. But quite apart from that separate doctrine, they have held in this country of course that the master is generally responsible for the acts of his employees, provided that they were in the scope of his employment; and I was merely trying to point out that down there on the Isthmus they have departed from the general rule prevailing in the United States to the extent of holding that even though the employee was acting directly within the line of his authority, nevertheless the master would not be responsible if the employee committed a tort in violation of the master's general instructions.

Senator HOPKINS. What do you mean by a tort?

Mr. ROGERS. I mean to say injuries inflicted on others by the employee's negligence.

Senator HOPKINS. That is, not a wrong, but a negligence?

Mr. ROGERS. Yes; a negligent act.

Senator CULBERSON. Mr. Rogers, before you proceed: If the Government of the United States did this work directly, it would not be responsible as a master even in the Zone; would it?

Mr. ROGERS. No; it would not.

Senator CULBERSON. The letting of this work by contract, then, increases the cost to the extent of this liability of the master, whatever that may amount to in the end?

Senator HOPKINS. This contractual liability.

Mr. ROGERS. I understand Senator Culberson's point; it does. I was trying to come around to explain exactly why we had assumed that liability, which otherwise would not have existed.

Senator CULBERSON. Yes. Now, I understand that by this contract method you will create a liability which would not otherwise exist, and you have imposed a half of that upon the Government.

Mr. ROGERS. That is quite true; and that is the argument which occurred to many of us when we first commenced to consider that clause. It is the one which occurred to me, and was the principal reason why, for a long time, I was opposed to putting that clause in there. But I was going to explain that we were ultimately led to adopt that clause by reason of a great question of expediency.

Senator KITTREDGE. By what authority?

Mr. ROGERS. If you will permit me to do so, I would like to make my statement complete on that point.

Senator CULBERSON. The Senator was about to ask, and so was I, where is there any authority in the President to create a liability for negligence against the United States?

Mr. ROGERS. There is no such authority in the President of the United States.

Senator CULBERSON. Where is there any such authority in any law?

Mr. ROGERS. If you will permit me, I will state the reasons why we inserted that clause and then I will state——

Senator CULBERSON. Well, you are the attorney of the Commission?

Mr. ROGERS. Yes.

Senator CULBERSON. I am asking you a legal question. As Mr. Lincoln said, instead of going across a log you can plow around it. I do not want you to plow around it, but I want you to tell me where there is any law authorizing you people to enter into a contract that the Government of the United States shall be responsible for a negligent act of its servant?

Mr. ROGERS. I can explain it in this way: It comes about through our authority to make contracts for the employment of men to do the work down there. To illustrate: If a man is willing to work for the Government on the canal work at a dollar a day without any liability or any right to sue the Government at all in case he should sustain injuries at the hands of the Government, he might agree to work for it for 75 cents a day provided the Government would assume a liability in that regard and let that enter into the contract of employment, and we might conclude that the risk to the Government in employing many men upon that basis would be less than the difference between 75 cents and $1 a day, and therefore we would be getting the men cheaper by assuming that liability and paying less in wage than we would be if we discarded the liability and paid them a higher wage.

That is exactly what has occurred with respect to this construction contract. We were presented with two alternatives. We could stand upon the law and claim that the Government of the United States was not suable for claims of this character and require the contractor to assume the entire liability for his own personal-injury claims; and in that event we would have had to pay the contractor a very much larger sum than we would have to pay him if we assumed a reasonable proportion of that liability. Indeed, the only inducement which led us to make that change was the fact that a great many of these syndicates that were organizing to bid for the canal work under this contract went to the indemnity companies in the East, the large companies which make a practice of insuring contractors against liability of that sort, and these indemnity companies were asking from 3 to 5 per cent upon the pay rolls to insure them against that liability. We could readily perceive that that was going to enhance the bids of these people from 2 to 4 per cent.

Senator HOPKINS. Will you let me interrupt you right there? How do you account for that, when you say that the law on the Isthmus is so much more liberal than it is in the States?

Mr. ROGERS. Simply because, for some reason, they could never get it into the heads of the attorneys for these liability companies that that was true.

Senator HOPKINS. It was clear with you, was it not?

Mr. ROGERS. It was clear with me, but we could not make it clear with them. I took the trouble to have Judge Collins, one of the ablest judges upon the Isthmus, who at one time was a circuit judge in Chicago——

Senator HOPKINS. Yes, I know him.

Mr. ROGERS (continuing). Dictate a memorandum covering this point of law, and I sent it to some of the contractors in order to explain that that liability was slight. They took it to these different indem-

nity companies, and took it up with their lawyers; but, nevertheless, as Secretary Root said on one occasion, out of sheer ignorance they refused to make any concessions toward the liberality of the law to the employer on the Isthmus when they came to consider this question.

Senator HOPKINS. From your statement, the liability is minimized.

Mr. ROGERS. Why, the liability there would certainly be less than 1 per cent upon the pay rolls if the Government, in fact, was suable. That has been our past experience. It perhaps would not be as much as half a per cent. And yet these indemnity companies, who always hesitate to venture into an unknown field, were insisting upon charging these contractors, to secure them against this liability, from 3 to 5 per cent upon the pay rolls.

That was the situation we were confronted with. We either had to pay for these claims in advance by paying the contractor from 2 to 4 per cent more than he would otherwise bid upon the cost of the work to carry out this contract, or else we had to compromise with him and agree to pay two-thirds of the claims as they actually arose. It seemed to us to be such a tremendous economy to the Government to make this concession that we finally inserted it, and we believe that we can uphold it upon the ground that it is part of the compensation to be paid the contractor. We have never considered that upon a question of principle at all—that is, with a view of creating a liability against the United States which did not exist against it at law—but simply from the point of view of expediency, knowing that if we left a clause in there which entailed the entire responsibility upon the contractor for personal-injury claims, which are really a part of the work and can not be dissociated from it (because those are the incidents which are a part of great construction work, no matter of what character), we knew that if we did not assume part of it by dividing the actual cost with the contractor we would pay for it many times over in the shape of larger bids which the contractor would submit.

Senator CULBERSON. Mr. Rogers, before you go ahead, let me ask you one or two preliminary questions; because if you answer in one way there will not be any necessity for this hearing. Has the Government decided to let contracts for this work?

Mr. ROGERS. No; the question has not been definitely settled as yet. The matter is still under consideration.

Senator CULBERSON. What is the object of this hearing to-day, then, if the Government has not decided to let contracts? I do not mean this particular contract; but has the Government decided positively to do this work, or any great part of it, by contract?

Mr. ROGERS. It has decided, as I understand it—I do not want to speak for the President of the United States or the Secretary of War or the rest of the Commission; but my understanding is that if the syndicates of contractors that are now bidding for this work meet with the terms and conditions imposed upon them in the invitation—that is to say, if they present a syndicate whose experience covers the entire field of work to be done down there upon the canal, and if the bid is thought to be satisfactory in point of price, as I believe the lowest bid would be considered, provided the other conditions were met—the Government would put out the contract.

Senator CULBERSON. The proposition is still in the air, then?

Mr. SHONTS. Secretary Taft testified yesterday before the House committee substantially that he was in favor of letting a contract

provided the conditions set forth in our invitations were complied with, just as Mr. Rogers has stated.

Senator CULBERSON. And that this particular syndicate should get the contract? You said something a while ago that looked a little like that. I want to know what the facts are. That is what I am after.

Mr. ROGERS. Our position is this, as I understand it: That we will let the contract at that price, 6.75 per cent, provided we are satisfied upon very complete investigations, which we are now making, that this syndicate in all respects meets the requirements of our invitation.

Senator HOPKINS. The syndicate that submitted it has gone to pieces. Do you mean to say that you will permit the remnants of that syndicate to reorganize and to hold to that bid and not open it to other contractors?

Mr. ROGERS. The syndicate has not gone to pieces.

Senator HOPKINS. Oh, yes, it has. The original syndicate that bid has gone to pieces according to my understanding. Some of the members of the syndicate were absolutely repudiated by the President, and Mr. Oliver was required to go out and search to get other partners. The point I want to get at is this: Does that bid stand for Mr. Oliver and anybody that he can get with him and exclude any other contractors in the country from making any new bids or anything of that kind?

Mr. SHONTS. I think perhaps I had better answer that as I understand it from the Secretary and the President. They have given Mr. Oliver the opportunity to perfect his bid, and if he does so, his bid, when the ten days are up, will be considered the same as it would if it had originally been perfect, and that is as far as they are committed, Mr. Senator.

Senator HOPKINS. Yes; but, Mr. Shonts——

Mr. SHONTS. Is not that an answer?

Senator HOPKINS. No, not entirely; because, as I understand it, Mr. Oliver, as an individual, did not bid. Mr. Oliver, as a part of a syndicate, did make a bid, and that syndicate did not comply with the requirements of the contract and was rejected.

Now, what I want to know is this: As to whether Mr. Oliver is going to have the privilege of gathering together another class of contractors and standing on that bid, and that other contractors in the country will be excluded from having any right or privilege to bid for the work?

Mr. ROGERS. I think I can state, in a general way, how that situation came about. There were four bids submitted. One of the bids, for 7.15 per cent, was wholly informal, and, of course, was not considered. There was another bid, which was likewise informal and was at 28 per cent, and that was not considered. The bids which were seriously considered were the bid of Mr. Oliver and Anson M. Bangs (put in in that form, I mean), at 6.75 per cent, and the bid of the McArthur-Gillespie syndicate, at 12½ per cent.

Under the advertisement the Government had to choose between those two. Mr. Oliver's first associate was found not to be financially satisfactory, and he was so advised. At the same time the Commission and the President were not disposed to accept a bid for 12½ per cent, which was the McArthur-Gillespie bid, provided they could get a substantial organization of contractors to take the contract at

a price equivalent to Mr. Oliver's bid. Neither Mr. Oliver nor the McArthur-Gillespie syndicate wished to have both bids rejected and a rebidding declared. At a hearing before the President when the McArthur-Gillespie people were there, they stated to the President that if the President could get a substantial association of contractors who could carry on the work satisfactorily under this contract, subject to the conditions which were imposed upon the contractor, a syndicate whose experience covered the field of work to be done, at even a price as low as 8 per cent, they thought he ought to do so. That is to say, that they would not stand in the way of the President making an arrangement of that sort. So that between the two contending bidders there was a desire upon the part of both that the bids should not be reopened and a fresh bidding ordered; but that first Oliver, if he could make good his bid with a syndicate of men such as we had called for in our invitation at that price, should be allowed an opportunity to do so; and then, if he could not do it, that the President ought to take up and consider the bid of the McArthur-Gillespie syndicate at 12½ per cent.

Senator HOPKINS. Right there; you say that the two contracting syndicates wanted to let those respective bids stand? In the interest of the general public, or of the United States, would it not have been better when neither complied with what was supposed to be right, to have the bids declared off, and let new bidders come in? There would be your two syndicates just the same.

Mr. ROGERS. No; that is the trouble. We would not have had those two syndicates just the same.

Senator HOPKINS. How do you know you would not?

Mr. ROGERS. Simply because they both declared—and I believe they were sincere about it—that they would not bid again, that is——

Senator HOPKINS. Do you mean to say that the McArthur-Gillespie syndicate have stated to anybody that they stood by their twelve and a fraction per cent bid and that they would take it at that or not take it at all?

Mr. ROGERS. They did make a statement in the press at the time that they were standing on their bid at 12½ per cent. Mr. Oliver stated that having made a bid——

Senator HOPKINS. No; let us get through with the McAuthur-Gillespie people first. Do you say that to the President or to the Commission or to the Secretary of War, anybody authorized to speak for that syndicate said they would stand by that bid and would not do the work for anything less?

Mr. ROGERS. Never to my knowledge, up until after the time that Oliver put in or made good his bid, was any statement made by the McArthur-Gillespie syndicate that they were willing to do that work for less than 12½ per cent; and they did state that they did not want a rebidding, and their whole argument before the President and elsewhere was devoted to supporting the reasonableness of 12½ per cent for the work to be done. They filed briefs, which I would be very glad to lay before this committee, showing why they could not afford to take the work at less than 12½ per cent; and they never, as I say, up to that time, made any proposition toward reducing that bid at all.

Senator HOPKINS. Have they at any time offered to take it, or made it known that they would take it, for a less figure than 12½ per cent?

Mr. ROGERS. Not in the form in which the contract is made.

Senator HOPKINS. I do not care to pursue that inquiry any further. I think, Mr. Rogers has stated enough so that I get the reasons for the line of action that he proposes.

Mr. ROGERS. Now, I will say this: This contract was considered, I believe, by nearly all of the leading contractors in the United States. Almost all of them gave it serious consideration. There were a number of syndicates organized to bid upon this canal, and they went to pieces from one cause or another. They all met with the very greatest difficulty in making their financial arrangements; and we have become satisfied that we can not get a syndicate of substantial men who will qualify under the terms of this contract, and give the United States a guaranty of $5,000,000 financial support, and their time and experience, for less than 6.75 per cent. And we believe to-day that if we had rejected all bids and thrown it open under the same conditions—and I do not believe that the Government ought to contract the work under less favorable conditions to itself than the contract sets forth—we would not have gotten bids as low as 6.75 per cent. We were trying to do the best that we could for the Government in this matter.

Senator HOPKINS. Under your contract, suppose one of the employees or a series of employees make a blunder in the work, in such a way that in that tropical and torrential climate a large part of the work is destroyed, and it is clearly due to the negligence of the employees. How have you covered that in your contract?

Mr. ROGERS. The contractor is responsible for that, by an express provision of the contract. The contract reads:

> He shall be responsible to the Commission for all injuries or damages inflicted upon the plant with which he may be intrusted by the Commission, and upon the Canal or any of its auxiliary works by the negligence of himself or any of his employees or subcontractors, or the employees of such subcontractors.

That is a tremendous responsibility; and it is one reason why this McArthur-Gillespie syndicate were unwilling to reduce their bid.

Senator HOPKINS. Is the railroad turned over to the syndicate?

Mr. ROGERS. No; the railroad is not. The railroad is still retained and operated by the Commission; but the Commission agrees to supply the contractor with trackage rights over the railroad, and to require the railroad tracks to be extended to such places as are required to best carry on the construction work. But the trains are operated over the railroad by the contractor and by the contractor's employees.

Senator HOPKINS. How do you discriminate, now, so as to determine, in case of any trouble, as to whether the Commission is guilty of negligence which would relieve the contractor, or whether it is the negligence of the contractor?

Mr. ROGERS. That would depend, like any other issue of fact, upon whether the negligence and injury or damage was occasioned by employees of the contractor. If so, then the contractor would be responsible.

Mr. SHONTS. I might say that it was because of the responsibility contained in the paragraph that General Counsel Rogers has just read that all the contractors insisted on having a limit placed to their liability. That is where the three-million-dollar limit came in.

Senator CULBERSON. Mr. Rogers, on that point, about the turning

over of the railroad to the contractors, does that practically make the Government supply the transportation?

Mr. ROGERS. No; that only applies to the use of the railroad as a construction agency. It has nothing to do with the commercial business of the railroad.

Senator CULBERSON. The contractors would not pay for the use of the railroad, would they?

Mr. ROGERS. The contractor pays nothing for the use of the railroad, because that is one of the facilities furnished to the contractor by the Commission.

Senator CULBERSON. The Government of the United States furnishes the railroad to the contractors, and furnishes the rolling stock, and agrees to extend the trackage, and all that. What do the contractors pay as a part of the cost of transportation—I mean, in general terms?

Mr. ROGERS. They simply pay for the salaries of their operating force.

Senator CULBERSON. Of the entire operating force of the railroad?

Mr. ROGERS. Not of the railroad. The railroad is kept distinct and apart, and is used by the Government for the purpose of carrying on its commercial business, and also for the purpose of carrying on that portion of the work on the canal which is reserved to it. There are upon the Isthmus the railroad company's tracks proper, and then certain construction tracks, the mileage of which is almost as large as that of the railroad itself. The construction tracks are owned by the Commission. These construction tracks we turn over to the contractor outright in the condition in which they are, and then the contractor adds to these construction tracks or relocates them from time to time as the necessities of the work require. Then the Panama Railroad itself is used as one of the agencies for the construction of the canal.

With respect to the Panama Railroad distinct, the Commission simply agrees to arrange to furnish the contractor trackage rights for the contractor's trains over the Panama Railroad, and it also agrees that the Panama Railroad will be extended to points where it is necessary to extend it to best carry out the construction work.

Senator CULBERSON. But the rolling stock and the track and everything belongs to the United States, and it is furnished free?

Mr. ROGERS. Yes; it is furnished free.

Senator CULBERSON. What will become, under this contract, of all this immense amount of machinery that the Government of the United States has purchased—the chips and whetstones, for instance—that they purchased from the old company, and the immense amount that has been added to it for the construction of the canal? What becomes of that so far as the contractors are concerned?

Mr. ROGERS. That is turned over to the contractor.

Senator CULBERSON. The Government turns that over to him?

Mr. ROGERS. Yes.

Senator CULBERSON. What do the contractors pay the Government for the use of it?

Mr. ROGERS. They pay nothing for it. To explain the theory——

Senator CULBERSON. Well, just a little further: What do you estimate to be the value of this entire machinery, apparatus, and so on, that will be turned over, free of charge, to the contractors?

Mr. ROGERS. I think I have heard it stated at fifteen millions; but I would prefer to have Mr. Shonts make a statement as to what the ultimate cost would be.

Secretary TAFT. What do you mean by "turned over," Senator.

Senator CULBERSON. Just what the witness said.

Secretary TAFT. Do you mean to become the property of the contractor?

Senator CULBERSON. Oh, no; I presume not.

Mr. ROGERS. For the use of the contractor.

Senator CULBERSON. But, of course, it will be valueless after they get through with it.

Secretary TAFT. Probably.

Senator CULBERSON. Practically so. It is turned over to them free of charge; they are to pay nothing for the use of it; and you think the value of that is as low as $15,000,000?

Mr. ROGERS. That is just an approximate estimate that I am making, I would prefer to submit to you more definite figures on the subject.

Senator CULBERSON. The value of the material that we got from the old company was far more than that.

Mr. ROGERS. The material we got from the old company has been practically of no value so far as the construction of the canal is concerned.

Senator CULBERSON. I am glad to hear you say that. We have thought so all the time, but it had been denied.

Mr. ROGERS. Some of the material and machinery down there has been used. Some of the dredges have been fixed up.

Senator HOPKINS. Right there, I would like to have you modify that statement——

Senator CULBERSON. I do not know that it needs any modification.

Senator HOPKINS (continuing). In accordance with what I understand to be the facts, that there is a large part of that material that was purchased from the old company that has been utilized on the Isthmus by Mr. Stevens.

Mr. ROGERS. I was going to state, so far as I knew, about what had been utilized. They have utilized some of the dredges. At first they utilized some of the locomotives and some of the cars; but ultimately they were found to be too light, and they had to discard them, because it was not economical to use them in the construction work. For a while they utilized the rails, but the rails had a bad section. They were not broad enough at the base, and the heavy rolling stock which we introduced was constantly running off the track because the rails turned. So they have ultimately been compelled to substitute a larger and a more satisfactory type of rail. They still use a good deal of that French machinery for repair purposes. That is to say, they take parts of the machinery and they build it over, and they work it into their newer plant which they are getting down there, in the way of repairs; but the French construction plant as such is used very little to-day on the Isthmus.

Senator CULBERSON. You said a while ago that it was practically useless.

Mr. ROGERS. I would say just as I have stated, so far as I know, that they are using one or two of the dredges, trying to make the most they can out of them. They are not the most economical type

of dredge, as I was informed by the officers in charge of that branch of the business when I was on the Isthmus. Wherever they have been able to utilize it they have done so.

Senator CULBERSON. Recapitulating somewhat, then, the means of transportation which belong to the Government down there and the machinery, apparatus, tools, and so on which have been purchased by the United States to construct the canal will be turned over to the contractors to be used by the contractors to carry out their contract free of any charge for their use?

Mr. ROGERS. Yes, sir; and I will state exactly where we think that that is an advantage to the Government. Our idea——

Senator HOPKINS. Before you state that, does that also cover what is under contract now? You have contracts for the making of cars and other things that have not been delivered and can not be delivered for some time yet?

Mr. ROGERS. Yes.

Senator HOPKINS. Those will all be turned over to the syndicate free of charge?

Mr. ROGERS. Yes. I will just read what the Commission agrees to furnish. It covers that. [Reading from form of contract, Article III]:

> The Commission agrees to furnish, free of cost to the contractor, plant, facilities, and means as follows:
>
> All locomotives, cars, steam shovels, drills, cranes, dredges, tugs, scows, dumps, rails, ties and track materials, electric light or power plants, and other machinery of a substantial character required to efficiently carry on the construction work and necessary work animals and equipment, but not hand tools or machinery of a minor character usually carried in stock, save through its department of materials and supplies, as hereinafter provided.

That was the great bone of contention with the most of the contractors. They wanted to supply the plant. They wanted to have the right to reject such plant as we had down there and substitute other plant if they deemed it more desirable or more efficient in the place of it. We insisted upon the Commission retaining the right to supply the plant.

Senator CULBERSON. Who pays for the labor?

Mr. ROGERS. The contractor pays for the labor in the first instance, and then his labor bills are reimbursed to him monthly by the Commission.

Senator CULBERSON. So the Government furnishes the labor?

Mr. ROGERS. It pays for it ultimately.

Senator CULBERSON. It furnishes it in the sense of paying for it?

Mr. ROGERS. Yes; in that sense; but the contractor selects the labor.

Senator CULBERSON. On that point—there seems to be some dispute about it—do you regard the eight-hour law as in force down there?

Mr. ROGERS. The eight-hour law is, by an act of Congress, not made in force with respect to foreign labor and their foremen. The eight-hour law is in force down there with respect to skilled mechanics.

Senator CULBERSON. What about the present condition of the law as to the employment of Japanese or Chinese coolie labor on the Isthmus now?

Mr. ROGERS. That law does not apply; it has been held not to apply down there.

Senator CULBERSON. By whom?

Mr. ROGERS. The Attorney-General has decided that.

Senator CULBERSON. Is it the purpose to stand by that ruling or to change the law so as to make the exclusion act applicable to the Zone?

Mr. ROGERS. We do not legislate on that subject at all; we take the law as we find it; and the best legal advice we can find has decided that the exclusion laws do not apply to the Isthmus.

Senator CULBERSON. I probably did not make myself plain. Is it the desire of the Commission that that law shall remain as it is construed, or would they be glad to have the exclusion law applied to the Zone?

Mr. ROGERS. I have my own opinion about that, and I think that the exclusion law ought not to be made to apply down there. I do not think that Congress ought to do anything which will handicap in anyway the work of carrying on the canal construction most efficiently.

Senator CULBERSON. In other words you believe that that character of labor is absolutely essential to the construction of the canal?

Mr. ROGERS. I do not say it is absolutely essential, but I believe that we ought to have access to labor from all parts of the world, all kinds of labor, to carry out the canal construction, if it seems that one class of labor which we have tried is inferior, or that another class of labor might be more efficient than the labor which we are employing just at the present time. I do not think that any of the doors to the employment of the best possible and cheapest labor wherever we can get it ought to be closed with respect to the construction of that canal.

Senator CULBERSON. If it is practicable to have this work done by American labor, do you not think it ought to be done, to the exclusion of the coolies?

Mr. ROGERS. I do not believe it is practicable; at least that has not been the experience up to the present time. American common labor has not gone down to the Isthmus.

Senator CULBERSON. Is that due to an indisposition on the part of the American laborer to go there, or to the low wages that exist there?

Mr. ROGERS. It is certainly due—it has been up to the present time—to an indisposition on the part of the common laborers to go there. The Commission has always been willing to take American common laborers on the Isthmus if it could get them.

Senator CULBERSON. Is that indisposition affected by the climate, or by the distance, or by the wages, or what?

Mr. ROGERS. I think all those things have entered into it. There has been no disposition, as far as I have been able to ascertain, for any considerable body of American common laborers to go down there and work on the canal.

Senator CULBERSON. What is the element in this labor question that influences the Commission and the administration to let this work by contract instead of doing it directly? We see a statement going the rounds that the syndicates will be able to manage or handle the labor proposition better than the Government. Now, what is that? What does that mean?

(Mr. Rogers consulted with Secretary Taft.)

Senator CULBERSON. I do not want to embarrass anybody, or to ask any improper questions.

Mr. ROGERS. I will say that we believe that one of the very greatest advantages that would be obtained to the Government by putting out the work at contract would be the relief to a certain extent from the constant pressure to which the officers of the Commission are subjected for favorable increases in wages or other privileges to be bestowed upon the laborers there.

Senator HOPKINS. Pressure from what source?

Mr. ROGERS. Pressure from the laborers themselves.

Senator CULBERSON. Pressure from the voters who labor upon the officers of the Government?

Mr. ROGERS. No. They contrast their condition as Government employees on the Isthmus with the condition of some favored employees in the United States; and wherever they can find that any laborer for the Government in the United States, or any employee of the Government in the United States, is treated with an exceptional degree of favor, or that he has certain privileges which are perhaps proper for this climate and condition, but which ought not to be granted down there for special reasons, they nevertheless insist upon getting exactly down there what other laborers or employees get in the United States; and they bring that pressure to bear upon the Chief Engineer and upon all of the other officers.

Senator HOPKINS. Who brings that pressure to bear?

Mr. ROGERS. The different classes of laborers. It is a constant pressure. That is one of the reasons Mr. Stevens was so much in favor of the contract plan.

Senator HOPKINS. From Jamaica, or Japan, or from China, what kind of an influence can they exert?

Senator CARMACK. He is talking about American laborers.

Mr. SHONTS. Skilled labor.

Senator HOPKINS. Oh, skilled labor.

Senator CULBERSON. In other words, you think the contractors will be able, to a greater degree than the Commission, to resist these importunities? Is that the idea?

Mr. ROGERS. I do not believe they would insist upon the privileges and concessions from the contractor that they do insist upon constantly when the Government does the work by the direct-labor method.

Senator HOPKINS. Do not these skilled mechanics and these men who hold the higher positions there engage in their work under a contract?

Mr. ROGERS. Yes; but——

Senator HOPKINS. They agree to go there and work for so much a day or a month, do they not?

Mr. ROGERS. The situation there is just this: There is no long-term contract with skilled laborers there to work for so much.

Senator HOPKINS. I know; but I can not see where those people would exert any wider influence upon the Government officials than, for example, the clerks in the Post-Office Department or the mail carriers, or others that have been struggling for years to get their pay raised and have not succeeded.

Senator CULBERSON. Or the employees in Washington, for instance.

Senator HOPKINS. Yes.

Mr. ROGERS. Why, the situation is just this. They go down there, and they are paid so much an hour, and then they insist that they ought to be paid more an hour. We give a certain vacation——

Senator HOPKINS. Then why not discharge them and get somebody else?

Mr. ROGERS. That is a difficult proposition.

Senator CULBERSON. Do you give them an extra month's pay down there, Mr. Rogers, as they do here?

Mr. ROGERS. I was just going to come to that, as showing one of the points upon which we are subjected to constant pressure down there.

With respect to our monthly employees they are given a month's leave a year, and in addition to that they are given a week on both ends, that being the time necessary to take them to and from the United States, making about six weeks' leave. That is always found advisable and economical, in a way, on the Isthmus, in order to allow the men to come north and recruit. But that rule has never been applied to the hourly labor—to the man who is paid by the hour. One reason for that is that our monthly employees do a great deal of overtime work, and they get paid nothing at all for it; whereas the man who works by the hour is paid not only for his overtime work, but time and half time. Notwithstanding that fact, pressure is being brought to bear, so that the men who are engaged there and paid by the hour shall be given a vacation and leave with pay, and they insist on being paid for holidays when they do not work, and they insist on having their wages increased. We are already paying upon the Isthmus many classes of skilled labor at least 50 per cent more than similar classes of labor get in the United States, and the wage has shown a tendency in cases to run still higher. Nevertheless, that very class of people are insisting upon an increase of their wages.

Senator CULBERSON. You say they are insisting. Have we not anybody that can hold them down to what is proper and fair and make them do their work, and if they are not satisfied with it, let them get out?

Mr. ROGERS. We do; we hold them down. That is what we have been doing; but when the Government is doing it, they think they have more masters than when a private corporation is doing it.

Senator HOPKINS. Are the conditions any different than they are in any other Department, where employees like to have their wages increased?

Mr. ROGERS. In the case of a private corporation they would appeal to the president or the board of directors, and there would be no further appeal; but in the case of the canal, they sometimes believe they can appeal from Peter to Paul, and that if they do not get the relief at one particular place they can apply to other quarters, and perhaps they may be able to get it there.

Senator HOPKINS. Is not the discipline there such that if a man goes out of his legitimate course to appeal for anything of that kind he will be discharged, so as not only to teach him a lesson, but others that are similarly situated?

Mr. ROGERS. Why, certainly. With respect to the individual laborer of course the administration down there is, I think, extremely

efficient, and insubordination or disposition on the part of a laborer to excite discontent and agitation and things of that sort would not be encouraged any more than it would in the best-run private corporation. But that is not what I am speaking about. They bring this pressure to bear down there, first, upon the Chief Engineer, for example; and then, if they do not succeed there, they resort to every other method that they possibly can for accomplishing the same result.

Senator CULBERSON. Mr. Rogers, you have explained in general way that so far as the labor question is concerned the shifting from Government work to contract work will have a tendency to reduce the price; we will have to pay for the labor, and also permit better control of it. Inasmuch as the contractor is to employ the labor, to be paid for subsequently by the Government, and he has a percentage upon the estimated cost of the work, where is the check on the contractor to keep them within reasonable bounds as to what he should pay for labor?

Mr. ROGERS. I think there is the very greatest check. In the first place, an estimate is made, as has heretofore been stated, of the cost of the canal. The moment that estimate is made it becomes to the interest of the contractor to improve upon that estimate—that is to say, to make the actual cost less than the estimated cost—because he gets one-third of the difference between the actual cost and the estimated cost, if the actual cost is the lesser of the two. That is a great incentive to him, of course, to keep within reasonable limits his pay rolls—the amount to be paid to each individual laborer.

Senator CULBERSON. You see, we have not had the benefit of this contract; we are guessing at what is in it. We have seen some statements about it in the newspapers.

Mr. ROGERS. That is the situation there. Of course the very greatest item which enters into the monthly bills of the contractor, which are reimbursed to him by the Commission, is his pay roll; and he practically gets, in a broad way, his percentage upon his labor bills, and the labor bills practically constitute the estimated cost under this contract.

Senator CULBERSON. One other question on this matter of labor: Have you stated substantially all the inducements, so far as the labor question is concerned, that influence the Government in doing this work by contract instead of directly by the Government?

Mr. ROGERS. So far as labor is concerned?

Senator CULBERSON. Yes.

Mr. ROGERS. I think that I have stated practically all that have occured to me.

The CHAIRMAN. Mr. Rogers was going to read something a few minutes ago. Might it not be will to let him read that?

Mr. ROGERS. I have practically covered it.

Senator CULBERSON. I think he did read that.

Mr. ROGERS. No; I did not read it.

Senator CULBERSON. We will just take the whole paper, if it is not confidential.

Mr. ROGERS. I ought to state this, I suppose [exhibiting paper to Secretary Taft]——

Secretary TAFT. What is it—a discussion of the contract?

Mr. ROGERS. A discussion of the contract; an explanation of the contract and the reasons why I thought——

Secretary TAFT. Put it all in.

Mr. ROGERS. I will just file this, then. It is a summary of the contract, explaining its different provisions, that I have gotten up, and only completed this morning; and I also append to it a statement of the advantages of a contract.

The CHAIRMAN. That will go in the record. Is it ready to go in?

Mr. ROGERS. Yes. In that is stated, Senator, another reason why I consider that the contract plan will be favorable, in so far as the labor question is involved.

(The paper above referred to will be found printed in full at the end of the report of this hearing.)

Senator CULBERSON. What is that reason in a nutshell, if you can state it?

Mr. ROGERS. It is the great difficulty the Commission has had in getting a sufficient number of skilled mechanics, foremen, and people of that class. We have thought that if we could get an association of contractors down there who perhaps altogether employed two or three times as many laborers in their private undertakings in the United States as would be necessary to be employed by them upon the canal, they would have a source of responsible, reliable men, whom they had tried out by experience for many years, and who were attached and devoted to them, upon whom they could draw to go down upon the Isthmus and carry out their work under the contract. That has always seemed to everybody who has considered this to be a very important advantage in putting out the work by contract. The greatest difficulty down there I have often heard Mr. Stevens say, is to get really an efficient class of foremen to direct the common laborers.

Senator HOPKINS. Do I understand you to say, then, that this Oliver syndicate has succeeded in getting that class of contractors with it?

Secretary TAFT. I would like to ask that the question as to the syndicates be not pressed. It is just pending now. We are making investigations and we have not reached a conclusion.

Senator HOPKINS. I will withdraw the question.

Secretary TAFT. And of course if the committee desires it, we will go into it, but——

Mr. SHONTS. That question was discussed before you came in, Mr. Secretary.

Mr. ROGERS. I stated what you were about to state—that the investigation of these different syndicates, to see whether they all have these resources and whether they have covered the entire field of work, was now going on, and that we had not completed it.

Mr. SHONTS. Most of it was left out of the record.

The CHAIRMAN. Mr. Rogers, is there any further statement you wish to make before the committee?

Mr. ROGERS. I will state that I have summarized, in this paper that I have now put in evidence before the committee, the contract, explaining its different provisions and why they were inserted, and also appending at the end a statement of the reasons why it seemed to me that the construction of the canal at the present time by the

contract method was desirable. That covers all that I would have to say upon the subject if I were to attempt to make a statement now.

Senator CULBERSON. And yet you have stated generally that the conclusion has not been absolutely reached to do this work by contract?

Mr. ROGERS. Simply for the reason that I have just recited—that there were questions bearing upon the experience of these contractors and other similar questions, which had not yet been settled.

Senator CULBERSON. In other words, whether it will be done by contract or by the Government depends upon whether the Government can get contractors that they are satisfied with and bids that they are satisfied with?

Mr. ROGERS. That is my understanding.

Senator HOPKINS (to Senator Kittredge). You raised some point under the Spooner Act as to the legality of the contract. Do you want to press those questions?

Senator KITTREDGE. I simply suggested that as one of the questions I would like to hear him discuss, if he desired.

Mr. ROGERS. I do not know that I could say anything more than I have already said with respect to that point. We have got to build the canal. It seems to be a duty imposed upon the President of the United States by that act to construct the canal. He is wisely left considerable latitude of methods. If he decides that the cheapest manner in which to construct the canal is by the contract system, he ought not to give up that method and allow everything to come to a stop simply because it might develop that in the outcome the cost of the canal is going to slightly exceed the aggregate appropriation provided for in the first instance. We can not tell that it will. We feel rather confident that the estimated cost, when fixed by this committee and added to the expenditures heretofore made, will not exceed the aggregate appropriation authorized under that act.

You will see that the estimated cost of the construction of the canal does not include a great deal of service that is still performed by the Government directly. The government of the Canal Zone, the sanitation of the Isthmus, the furnishing and maintaining of the plant, the running of the commissary department, and the Panama Railroad Company—various things of that sort—are functions that are reserved to the Commission under the contract; and of course the cost of all of these things will not enter into the estimated cost of the construction of the canal to be fixed by the engineering committee. Certainly we are not going to enter into any contract which on its face is going to violate that provision of the law. I do not see how it can, and I do not know that it can ever be determined until the contract is finished whether the actual cost under this method will exceed or will not exceed that aggregate amount. Even if the engineer's estimate were to be less, of course the contractor might run over the estimate, or he might run under it if the estimate were to be more than $135,000,000.

STATEMENT OF HON. WILLIAM H. TAFT, SECRETARY OF WAR.

Secretary TAFT. I do not want to go into the details, except as questions may be asked; but I would like to state generally the reason why this form of contract was taken. I will state, first,

that it is a contract by which the contractor furnishes hardly anything to the Government except his skill, his organization, and the motive which a contractor has for reducing the price; and that motive we think we have furnished without requiring him to bid on a lump sum or for prices to be paid him based on unit prices and estimated quantities.

The reason why we did not think it wise in inviting bids to take the ordinary course of asking the contractor to furnish the material and furnish the labor and then be paid on estimates from month to month or from quarter to quarter was because we felt that in the discharge of this work the element of risk was so very great that, owing to every contractor's want of knowledge of the exact conditions there, we could not secure a bid at a price which would be economical to the Government. By reason of the contingencies involved in the discharge of work in the Tropics at a remote distance, with the labor question largely unsolved and with the conditions in respect to the structures as uncertain as they necessarily are on the Isthmus, any contractor acting on reasonable grounds must charge the Government or insure himself against loss by a very much greater percentage than the Government would actually incur in the matter of risk if it ran the risk and insured itself rather than the contractor insuring himself. The principle is partly illustrated by the fact that the Government does not insure its buildings, because it has so many buildings that a loss can not occur to it such as to make it less expensive for it to insure itself than to insure in a company which must take into consideration all the losses it is likely to suffer; whereas the private owner of a building, which is his all, and in which a large part of his capital is involved, must necessarily insure and pay a high rate in order to prevent what would be a great disaster to him.

Senator CULBERSON. Right there, is it not the fact——

Secretary TAFT. The Government (if I may continue this) is bound to go through with this business. It has the money, it is putting it in, and it can afford to suffer all the loss that would accrue and that would be sought to be met by the percentage of contingency that the contractor would include in any bid that he might make. Therefore the purpose of the contract was as far as possible to reduce the risk of the contractor, and to make the contractor in a sense nothing but a Government agent.

Senator CULBERSON. Right there is where I wanted to ask you a question a moment ago, without expressing any opinion, because I have none. I am waiting, listening.

Secretary TAFT. Yes, sir.

Senator CULBERSON. Is it not the fact—does it not amount to that—that entering into this contract practically, to all intents and purposes, makes the contractor what the present law contemplates should be the Commission?

Secretary TAFT. No, sir; not so. If the principle of this——

Senator CULBERSON. In other words, the instrumentality that Congress decided upon to construct this canal by the President was the Commission; and now you are placing the contractors between the Commission and the work, so that a second agency has been created, or will be created, by the contract system to do work which the

act of Congress contemplated should be under the supervision of the Commission.

Secretary TAFT. No, sir; I think not.

Senator CULBERSON. Well, do you want to keep this Commission, too—this expensive Commission, here?

Secretary TAFT. No; I do not want to.

Senator CULBERSON. Besides paying five or six million dollars to the contractor?

Secretary TAFT. I do not want to keep it. What I mean is that I would like to have a chief engineer, who shall himself be the Isthmian Canal Commission or Commissioner, just as the law which has been introduced provides. So large a Commission is certainly not necessary. If we desire to use engineers, we ought to employ them as consulting engineers, and pay them either a salary or for the work which is done. I think we have now reached the time when we can do that.

But to recur to your former question: I have described the contractor in a sense as a Government agent. I do not mean thereby to foreclose myself from saying that he is a contractor, because there is a well-known system of contracts throughout this country known as percentage contracts. Mr. Stevens, who suggested the form of this contract, suggested it because he had worked with such contracts on the Great Northern Road; and I have been surprised to find how many percentage contracts are now being let by many of the great railroads and many of the persons who are constructing buildings. The contractor is paid a percentage; but his expenses are paid, after they have been incurred, in a very short time. He usually buys the material, and he occupies, in law, the relation of contractor to his principal. He employs the men. They have no relation to his principal. He is their employer, and he is a contractor in the true sense of the word. But the terms of the contract are such that the principal turns over to him the plant, and turns over to him the material; or, if he does not turn it over to him, he pays him for it in so short a time that it is practically the same thing, and he gets his reward in a percentage on the amount of money that he expends.

That system of contract reduce to the contractor the risk that he runs, and throws the risk, as it ought to be, on the Government, which is able to stand it, and able to reduce the element of risk and the loss, because it stands the risk. It has the money to do it; it has the capital to do it, and it does not have to estimate it, for it stands it. It suffers the actual loss rather than pay to the contractor an anticipated loss which is much larger than the actual loss would reasonably be.

On the other hand, what we wished to secure on the part of the contractor was the same motive that the contractor would have in performing an ordinary contract, to wit, the motive of private gain in reducing the cost; and that motive of private gain we all recognize.

The question has been asked as to whether we expect the contractor to reduce the cost of labor. Of course we do. That is the real reason why any contractor is invited to do the work for the Government, rather than to do it by Government work; because, no matter how conscientious the Government agents may be, it is found that the obligation of the oath and the desire to do their duty is not as strong

as the motive of private gain to close all the corners, to save the leakages, and to reduce wages and pay where they ought to be reduced, or keep them down to something reasonable. That is human nature—that is all; and that is an element of human nature that has been recognized ever since this Government was founded—that it is much better to have a contract, if we can do work by a contract, than to do it by day labor by the direct agency of Government officers.

Senator CULBERSON. The idea, then, is that the total percentage that the contractors will receive represents, and will represent in a sense only, their profit on the transaction if they had originally taken it in the usual way of paying for everything themselves?

Secretary TAFT. Except this: We pay everything, practically, that they do on the Isthmus. There are a number of things left out that we do not pay and that they have to incur; but they have to carry on their organization in this country, and they have to be paid for their own time. I will say how important I deem that time. We have had estimates from various contractors as to what that organization ought to cost them. The people who bid 12½ per cent said that the organization would cost them 4 per cent; and then there are others who say that they do not expect to make anything out of the contract except what they make by earning the premium—that is, the difference between the estimated cost and the actual cost.

Senator HOPKINS. Mr. Secretary, where does this 4 per cent come in? Where do the contractors claim that it goes?

Secretary TAFT. In maintaining their organization here, getting their labor here, paying the men who finance the enterprise here, and so on.

Senator HOPKINS. Do you mean the commission to the bankers?

Secretary TAFT. Yes, sir. That is one of the things that we have found rather discouraging in the form of this contract, in requiring five millions of capital—that the amount of percentage that has to be paid to the capitalists who advance the money has increased the percentage that has been charged more than we thought it would.

Now, let us see what this contract covers. It covers transportation and excavation; it covers concrete work, and it covers dredging. Those are the three great departments. The purpose of this contract was to secure, if possible, on this percentage basis, the skill, experience, and organization of the greatest contractors in the country in those three different branches. And if we can do that, and if we have done that in these bids that we get, then it seems to me that it would be very wise to carry out the contract. But I beg of the committee to carry in mind the fact that in order to secure that the closest investigation must be made into the character of the contractors, into their stability, into their experience, and into their responsibility and reliability as men, and also into their organization for the purpose of enabling them to furnish the men who can control this particular work and this particular branch of work on the Isthmus when the contract is entered into.

If we do not get all those elements, then we do not get what the bids were invited for, and we do not get what will make this contract profitable. That is what I mean when I say I favor the contract; but I favor it in the light of the description in the invitation for bids as to what we wish in a contractor.

Of course, we offer not only the inducement to reduce the cost, and thus create a premium for the contractor of one-third of the difference between the estimate and the actual cost, but we also offer a premium of $100,000 a month in the matter of time, so that we hope we have furnished a motive different from that in the ordinary contract, but still a very powerful motive to the contractor to give us the benefit not only of the disposition to economy under an ordinary contract, but also the disposition to push the work. And it goes, it seems to me, without saying—the experience of human nature is—that the contractor can push the work harder than the Government official. The man whose salary is dependent merely on a proper discharge of his duties, one that can not be criticised, will in the end not do so much to push the work as the man whose profit depends on it.

Senator HOPKINS. This percentage, as I understand it, is not a percentage on the material, but a percentage on the amount paid for labor, is it not?

Secretary TAFT. Yes, sir; practically that. It is a percentage on what is called in the contract the reasonable cost; but we eliminate from the reasonable cost so many things that the Commission furnishes that it is practically the labor roll added to the cost of small tools; and that, I understand, most contractors estimate to be about 3 per cent of the total cost.

Senator HOPKINS. In what way in your contract have you guarded yourself against stuffed pay rolls?

Secretary TAFT. Merely by the auditing. We have complete charge of the auditing of the accounts of the contractor. We have a large auditing bureau, and the contractor does not get the money unless we have an opportunity to examine his vouchers from month to month.

Senator HOPKINS. Suppose he reports that he has 17,000 men at work?

Secretary TAFT. We shall have to have timekeepers and all that sort of thing to conduct the inspection, just as we now do.

The CHAIRMAN. Does not the contractor furnish the supplies to his employees, or are they furnished by the Government?

Secretary TAFT. They are furnished by the Government, or he may do so; but if he does do so, he is not entitled to make any profit out of that.

The CHAIRMAN. There is no profit in that to him?

Secretary TAFT. No, sir. Now, suppose the pay roll were to cost $50,000,000. At 6.75 per cent that would amount to $3,375,000, which would be about $421,000 a year for eight years. That would be the compensation that he would receive if he completed the work at the estimated cost and in the estimated time. Of course it would increase largely if he reduced the cost, and he would earn $100,000 a month, according to the time reduced.

Senator HOPKINS. Then, practically, Mr. Secretary, as I understand it, all the profit he gets is really what he makes on the labor—that is, the percentage on the cost of the labor?

Secretary TAFT. Yes, sir; that is it. That is one of the objections that the contractors made to our claim that the percentage ought to be lower. They said this was not a percentage on the real cost of the work; it was a percentage only on the pay rolls.

Senator KITTREDGE. There is a provision permitting the contractor to take over the mess?

Secretary TAFT. Yes; but you will observe that there is a provision which says that if he does he shall not make a profit out of it.

Senator KITTREDGE. But he is allowed a commission on that in that event, is he not?

Secretary TAFT. Yes; he is allowed a commission. It goes into the reasonable cost of the work, so that it is figured just as labor would be, or as the small tools would be.

Senator KITTREDGE. So that that is another element upon which the percentage may be reckoned?

Secretary TAFT. Yes, sir; upon which it might be reckoned. Then there is another provision: We have the option to furnish the coal or not, as we choose. If the contractor furnishes it, it would go into the percentage; and so with the cement.

Mr. ROGERS. Cement and explosives; we furnish him those?

Secretary TAFT. Yes; well, the coal is the same way you will find. I think that there is an option to furnish it.

Mr. ROGERS. We furnish the coal, but reserve the option to furnish the electricity.

Secretary TAFT. Oh, is it electricity?

Mr. ROGERS. Yes.

Secretary TAFT. I thought it was coal. There was one point with respect to the plant that we received from the French. I think it ought to go into the record, if that becomes important at all, that we did not pay anything for that according to the calculation or itemized statement of the forty millions. That included for excavation, $27,500,000; for the Panama Railroad, $6,850,000; for maps, drawings, and records, $2,000,000; for buildings, storehouses, hospitals, land, equipment, and everything of that nature, about $4,000,000; and as I have understood, the material in the machine shops and all this enormous plant, most of which is of no use at all, was simply thrown in. You have had occasion to investigate these matters and perhaps know better than I do; but that is my recollection of the statement, and Mr. Shonts confirms it.

Senator HOPKINS. Under the contract, suppose that a piece of work is negligently done, and under such conditions that it has to be done over?

Secretary TAFT. The contractor has to do that at his own expense.

Senator HOPKINS. How do you get at that? Suppose he claims that there is some Government liability in that; that you are not furnishing him cars, or proper transportation, or this or that?

Secretary TAFT. That is left to the final decision of the Chief Engineer.

Senator HOPKINS. Is he the arbiter of that?

Secretary TAFT. Yes.

Senator HOPKINS. So there is no question of the Government being injured through anything of that kind?

Secretary TAFT. No, sir.

Senator HOPKINS. It is not left for a lawsuit?

Secretary TAFT. No, sir; that is one of the elements that the contractors count as a risk of the contracting. It seems to be a substantial part of the contractor's risk—this doing over work which proves not to have been well done.

Senator HOPKINS. And regardless of whatever they may contend, they present their claim to the Chief Engineer, and if he decides that it was due to the negligence of the contractor, the contractor will be compelled to reconstruct that work in accordance with the original plan, without cost to the Government?

Secretary TAFT. Yes, sir; the provision is that, except in case of fraud or palpable error apparent on the face of the record, the Chief Engineer's decision shall be final.

Senator HOPKINS. Fraud on the part of whom?

Secretary TAFT. Of the Chief Engineer.

Senator HOPKINS. Yes; or palpable error, you say?

Secretary TAFT. Or palpable error. You have the contract there, have you not?

Senator KITTREDGE. Yes; I have it.

Senator HOPKINS. I have never read it.

Secretary TAFT. You ought to read this.

The CHAIRMAN. You have a copy of that contract, have you not?

Senator HOPKINS. I do not think I have. If I have, my clerk has not called my attention to it.

Secretary TAFT. Here it is:

In the absence of fraud, misconduct, or a palpable error apparent on the face of any decision or award.

Senator HOPKINS. Would not the expression "palpable error" lead them to take an appeal on that?

Secretary TAFT. They can not put in any evidence on that.

Senator HOPKINS. That is the point I want to get at. If they present evidence, they will present their testimony to the chief engineer?

Secretary TAFT. Yes.

Senator HOPKINS. And he will look that all over, and if in his judgment they should reconstruct, they will take an appeal from that. Does not that leave it open as a question of fact, the same as it would be with a jury?

Secretary TAFT. No; I do not think so. The truth is that that is drawn from the language which justifies a rehearing of a final decree in equity, and that is very narrowly limited, and it has to be apparent on the face of the record. That is, it is not a question of weighing evidence, and it is not a question of deciding whether——

Senator HOPKINS. Yes; I am familiar with the equity rule on that point.

Secretary TAFT. Yes.

Senator HOPKINS. But where do the contractors appeal to?

Secretary TAFT. They appeal to the chairman of the Commission.

Senator HOPKINS. And then where does it go?

Secretary TAFT. It does not go beyond that; that is final. But where the chairman of the Commission and the engineer are the same person, there is a provision in the contract which enables the appeal to be left to the head of the Department designated by the President for the time being to supervise the work.

Senator HOPKINS. And then his decision——

Secretary TAFT. His decision is final.

Senator HOPKINS. Oh, well, that would be all right.

Secretary TAFT. You see it is provided in Article XIII that—

"Commission" means the present Isthmian Canal Commission or any successor thereof, or any individual, officer, or department of the United States to whom or to which the duty of constructing or arranging for the construction of the Isthmian Canal may hereafter be intrusted, by law or Executive order; and "Chairman of the Commission" means any successor exercising the chairman's present functions.

Senator HOPKINS. The point I was getting at was that it does not give them an opportunity to go into court and file claims against the Government, and all that sort of thing, and litigate them.

Secretary TAFT. No; it was drawn specifically to avoid that.

The question of the legality of the contract which has been raised was raised yesterday in the other committee. I have had occasion to answer a number of questions by this committee before as to what the power of the President is under the law. It seems to me he has the power to make a contract for the construction of the canal, subject to such limitations as may arise from the limitation in respect to the issuing of bonds and the appropriations; but the question as to just what limitation that was, if any, has never been mooted with us, because it has never come to the point.

After looking at the law, however, it seems to me that if we were to find by an estimate that the cost must necessarily exceed the amount contained in the law, we would not have the right to go on with the contract until we got special authority from Congress. That is my judgment about the construction of the law.

There is one other point with reference to the legality of the contract, and that is the feature of it which stipulates that, outside of the total cost of the work upon which a percentage is to be calculated, the damages to employees from negligence of the contractor (I do not know whether that includes members of the public as well as employees)——

Mr. ROGERS. Yes——

Secretary TAFT (continuing). Shall be met two-thirds by the Government and one-third by the contractor; and it has been questioned whether we had the power, or the President had the power, under this act to make such a contract in view of the general principle of law that the Government is not liable for damages for injury committed in tort.

Mr. Root and I discussed that question at some length, and we reached this conclusion (I do not know that we are firm in the matter, but we reached this conclusion): That taking a contract like that, by and large, considering the actual fact that a contractor in making his bid must necessarily insert as part of the percentage of his bid something to meet that expense, therefore, while we could not pay damages of that sort, we might make an arrangement with the contractor who had to meet them to recompense him for that element of cost; and we were led to that by what we found with respect to the fidelity companies, and what they were going to charge the contractor for the damages which would accrue in this way. I do not think I exaggerate when I say that they proposed to charge from 2 to 5 and 6 per cent. You will remember better about that, Mr. Rogers, than I do.

Mr. ROGERS. They stated to me from 3 to 5 per cent.

Secretary TAFT. From 3 to 5 per cent on the pay roll. We hoped to secure bids at a percentage of 5 per cent on the pay roll, and that one item alone would tend to increase by 50 per cent or 100 per cent

the percentage of the contractor. We had had experience down on the Isthmus in running the Panama Railroad Company, and had found under that jurisdiction and under the conditions that prevailed there how very small the element of recovery for such damage is.

Senator KITTREDGE. Before you came in, Mr. Secretary, I raised that question with Mr. Rogers, and he gave substantially the reasons which you now give as influencing the making of the contract in this form.

Secretary TAFT. Yes.

Senator KITTREDGE. Now, the question that I had in mind was as to the legality of it, rather than the reasoning.

Secretary TAFT. That is the question. It is the question of the legality, and I am explaining why we had a motive for sustaining the legality if we could.

Senator KITTREDGE. Yes; I understand the reason.

Secretary TAFT. It was mooted the other day in the Appropriations Committee of the House, and they thought that it might be wise to put something in the sundry civil bill among the appropriations justifying such a departure from the general rule which applies in Government contracts of that sort.

Senator KITTREDGE. In connection with your testimony, Mr. Secretary, I would like to put in the record the contract and proposition.

Secretary TAFT. Yes. I think we ought to furnish you copies of the whole thing, Senator, for each member. We have them here.

Mr. ROGERS. I would suggest putting in also that letter from Mr. Shonts transmitting it.

Senator KITTREDGE. We would like to have, for our permanent record, all the records that you have connected with this contract.

Secretary TAFT. Yes.

Senator KITTREDGE. If you have not them here, could you furnish them?

Secretary TAFT (to Mr. Rogers). Have you not some other records and correspondence there?

Mr. ROGERS. Yes; I have here also a general plan for the construction of the Panama Canal, gotten up by our engineers and sent out to the bidders.

Secretary TAFT. You might give the whole history. There is a letter from Mr. Stevens there, is there not, in the beginning? Was that a confidential letter?

Mr. ROGERS. What do you mean?

Secretary TAFT. The letter recommending the construction by contract.

Mr. SHONTS. That he wrote to me—yes; we have all those.

Mr. ROGERS. Even before that; we have the first draft that Mr. Brown submitted.

Secretary TAFT. I think possibly the Senate would like to have all those things.

Senator KITTREDGE. We would like to have everything you deem valuable for our information.

Secretary TAFT. I will go over it with you and send it up for your records.

Senator HOPKINS. We do not want any lumber, though, Mr. Kittredge.

Senator KITTREDGE. Oh, no.

Senator HOPKINS. We want the completed part—the part that the Commission and the Secretary act upon.

Senator KITTREDGE. That is what I have in mind.

Senator CARMACK. Mr. Secretary, I have never understood how the contractors could make any intelligent estimates on the work down there so long as the labor system is in such an uncertain state.

Senator HOPKINS. They do not have to, under this contract.

Secretary TAFT. That is one great difficulty under this contract, as I suppose Mr. Rogers has explained.

Senator CARMACK. I know; but you have tried to make some estimate as to what the work is going to cost as you go along, have you not?

Secretary TAFT. Yes.

Senator CARMACK. So as to try to keep it within the bounds, anyway?

Secretary TAFT. Yes. It is very hard to do it. That is the real reason why we took this form of contract.

Senator CARMACK. One strong argument, it strikes me, in favor of this sort of a system would be that fact.

Secretary TAFT. Yes, sir.

Senator CARMACK. I do not see how a contractor could go there and intelligently make an estimate and make a contract to do a piece of work for a certain fixed sum.

Secretary TAFT. I do not think he could.

Mr. ROGERS. He simply could not.

Secretary TAFT. I think Mr. Rogers must have explained the equitable features of the contract.

Mr. ROGERS. I did not give a summary of it as I did yesterday, because they immediately commenced to ask questions as to special features, and I therefore put in that written statement.

Secretary TAFT. Let me make this statement, then. Of course the fixing of the estimate is the keystone to any additional reward or any reduction on the reward that the contractor is to get. The question which was put to us once, when we stated that we wished to eliminate, as far as possible, risk to the contractor, was, How do you eliminate that risk if you make his reward contingent in any way on an estimate that you must make, that he might have to make in bidding on a lump sum? And it had weight.

We have attempted to meet that in this way: We have provided in the contract that any change in the scale of wages, any change in the knowledge of the physical data, or any circumstance of material bearing which, by reason of lack of their then knowledge, the committee did not take into consideration, might be used as a basis for an appeal to the President of the United States to direct a revision of the estimate with those facts known, and that this revision might be undertaken either at the instance of the United States or at the instance of the contractor. That was the way in which we attempted to remedy the difficulty, leaving the matter to the decision of the President of the United States, not as to what difference ought to be made in the estimate, but as to whether the facts relied upon were sufficient to justify a recalling of the committee and a revision of the estimate, both as to time and as to cost, by the committee.

I am very much obliged to the committee for its patience.

The CHAIRMAN. Mr. Secretary, is there anything further that you wish to state?

Secretary TAFT. No, sir; I have nothing more.

The CHAIRMAN. Mr. Shonts, do you wish to make any statement to the committee?

Mr. SHONTS. No.

Senator KITTREDGE. Mr. Shonts, may I ask you one question? Has the Commission records of the high water during the past season on the Isthmus?

Mr. SHONTS. Yes.

Senator KITTREDGE. Are they here in Washington?

Mr. SHONTS. I told Mr. Stevens, as soon as he had the computations finished to send them up, and I presume they are there. I have not personally seen them.

Secretary TAFT. If they are there, can you not send copies of them to the committee?

Senator KITTREDGE. That is what I was going to ask.

Mr. SHONTS. I will. I will send them up, and if they are not there, I will cable for them and have them sent up and sent to you. At the time I got the last letter from him prior to my answering him and telling him what I wanted, as I have just stated, he told me that the computations up to that time made him think that the waters were as high and that the velocity was as great as in 1879, and he rather thought that the final figures would show that it was greater.

Senator KITTREDGE. This committee has records of that sort for many years past, and we would like the records of this past season.

The CHAIRMAN. Have you any additional borings, Mr. Shonts, since the last were furnished here?

Mr. SHONTS. No; not since the last were furnished.

The CHAIRMAN. They were pretty liberal at the time.

(The committee thereupon adjourned.)

The following is the paper prepared and submitted by Mr. Rogers and referred to in his statement:

Memorandum on form of contract adopted by the Commission for the construction of the Panama Canal.

Before the type of the canal was finally fixed by Congress it had long been the best judgment of those most intimately connected with the construction of the canal that certain manifest advantages were to be obtained by providing for its construction through some form of contract. Immediately after the lock-level type was determined upon by act of Congress June 28 last, the chairman and the Commission proceeded to the Isthmus, and there the general form that the contract should take was matter of frequent discussion between the chairman and the chief engineer, Mr. Stevens. Upon the return of the chairman to the United States, in August, the actual preparation of the contract was seriously taken up. The final form was the result of repeated consultations with many leading contractors from all parts of the United States and their counsel and of long deliberations with the Secretary of War, the Secretary of State, and the President himself.

Many suggestions were received from many sources, and all were given consideration, but none was ever adopted unless it appeared that, while offering substantial inducements to contractors to submit reasonable bids, the interests of the Government were likewise fully protected thereby. The primary consideration with the Commission and its advisers at all times was that the contract should secure such complete control of the work to be performed to the Government that the Government should not suffer through the contractor's ability to stand upon any provision of the contract, whether express or implied, or even by reason of his default. Within the limits fixed by this consideration the Commission endeavored to frame a contract which would be fair to the contractor and not entail upon him useless hardships without corresponding advantage to the Government.

A contract upon a percentage basis clearly seemed to afford the greatest measure of protection to the Government with the least possible burden to the contractor. Such a form of contract, moreover, was best adapted to the nature of the work. It enabled the Government from time to time to change its plans and specifications. It would unquestionably prove less expensive, inasmuch as it eliminated that large addition for unforeseen contingencies which any contractor, in justice to himself, would be required to add to the apparent cost in bidding for the work as a whole or upon the basis of unit prices. The advantages of this form of contract were set forth in great detail in a letter of the chairman of the Commission to the Secretary of War, transmitting the original draft of the contract, August 29, 1906, to which reference is made.

With this preliminary statement, the form of contract actually adopted and required to be accepted by all bidders under the terms of the invitation will now be considered. Special attention is invited to those provisions which protect the Government against loss or ill treatment at the hands of the contractor.

The manifest advantage to be obtained by the Government from the contract method of construction was not to be found in the entire surrender to the contractor of a vast body of the work intimately but not immediately connected with the work upon the canal. Experience had already shown that all governmental functions, the sanitation of the Isthmus, the maintenance of hospitals, the conduct of the commissary department and of the eating houses, the construction and maintenance of quarters, whether for the employees of the contractor or of the Commission, the operation of the Panama Railroad, and, finally, the purchase of materials and supplies, could be handled with entire satisfaction by the Commission, and at an ultimate cost not greater than could be expected from the best discharge of these functions by the contractor. In handling these special matters the intervention of the contractor offered no distinctive advantages. The preponderance of advantage was, indeed, the other way. The main advantage of the contractor's intervention lay in taking up the work of actual construction. The line between the work to be done by the contractor and that reserved to the Commission was therefore drawn at this point.

The contractor is strictly limited in his activities to the work of actual construction, under the direction of the Commission and its engineering force. This limitation upon the contractor has required the Commission to furnish and maintain the entire construction plant

and all the materials that enter into the construction of the canal. From this circumstance several advantages ensue. The elaborate plant already assembled upon the Isthmus by the Commission can not be rejected by the contractor. Upon the cost and maintenance thereof and upon the cost of the materials that enter into the canal no commission is paid the contractor, and the contractor's compensation is correspondingly lessened, and, finally, the judgment of the chief engineer of the Commission in all cases controls, not only as to the character of the plant itself, but as to its extent and cost. The advantages reserved to the Commission in supplying and retaining complete control of the plant are likewise extended to other obligations which it was incumbent that the Commission should assume upon behalf of the contractor.

These obligations, which the Commission would incur at all events, even if it continued to do the work by direct labor, include the furnishing of quarters for the proper housing of the necessary employees of the contractor, as to which, however, the Commission is to be allowed a reasonable time for their construction; hospitals, warehouses, and office buildings necessarily required by the contractor in the prosecution of the work; telegraph and telephone service; extensions of the Panama Railroad, where essential to the proper execution of the work, which if not furnished by the Commission the contractor would be entitled to furnish himself and charge against the Commission, with his percentage upon the cost. With respect to the contractor's employees and the feeding of the contractor's men, exactly the same rights are extended to the contractor's employees as to those of the Commission; but the Commission, in order to prevent secret or incidental profits in most of all a matter so important to the employees as their subsistence, has provided that the contractor shall make no profit from the operation of the mess houses if he takes the same over; and it is also provided that the Commission's own employees shall under all circumstances be entitled to equal accommodation at such mess houses as are taken over by the contractor with the contractor's own employees.

An exception to the general rule that the Commission would supply all of the facilities required by the contractor to efficiently prosecute the work is made in the case of hand tools and minor machinery, such as are usually carried in stock, and in the case of what is known as "running repairs" upon equipment utilized by the contractor. Hand tools and minor machinery do not enter to any large extent into the aggregate cost of the canal. Many of them are owned by the contractor's own employees, who would prefer to use their own tools. A certain discretion in regard to the use of these tools, without the sacrifice of any advantage to the Commission, afforded a positive advantage to the contractor. It was therefore provided that they may be furnished by the contractor himself, their renewal and the cost of current purchases thereof to be a proper charge entering into the monthly estimates. The Commission is prepared to make in its shops all substantial repairs to the construction plant. It will often happen, however, that breakdowns and damages of a trivial character will be inflicted upon the plant while actually employed in the work of construction. These repairs can be readily made by the contractor's men on the spot, whereas if this obligation were assumed by the Commission it would be required to maintain a traveling force of

workmen, and the cost of the Commission would be out of proportion to the advantages obtained.

The obligations imposed upon the contractor, while not believed to be unreasonable in any respect, are such as keep him within lines of general conduct which previous experience in the construction of the canal has shown to be essential to its best progress. The Commission's employees upon the "gold" list, who after two years of labor are in the main picked men, and whose fidelity to duty could not without injustice be overlooked by the Commission, are required to be taken over by the contractor, nor can they be discharged or their salaries reduced except for cause, and then only by the approval of the chief engineer. Contracts for labor which the Commission may have entered into the contractor is likewise required to assume, but in view of the small number of these contracts this obligation has become of minor importance. He is required to scrupulously abide by all the rules and regulations prescribed by the sanitary department, and to issue such orders to his own men as may be required of him for their proper observance and enforcement. He must for cause discharge any employee in his service upon written notice of the chairman or the chief engineer. He is required to comply with the laws of Congress respecting the hours of labor, the character of employees, and other matters, in so far as the same may be applicable to the work undertaken by him. He is required to assume a responsibility for the material put into the work, and can only exempt himself from liability for damage or extra expenditure occasioned by the use of unsound materials in cases where the chief engineer has in writing definitely approved of the materials or their preparation and use. He must agree to carry on the work, if required, during the night as well as during the day, and in such shifts as may be required of him. He shall not enter into subcontracts for the performance of the work without the consent of the Commission, to be given only after the contractor has furnished full information as to the nature of the proposed contract and as to the financial standing, resources, and facilities for carrying on the work of the proposed subcontractors; and, finally, he is held responsible by the Commission for all injury and damage inflicted upon the plant with which he may be intrusted by the Commission and upon the canal or any of its auxiliary works by the negligence of himself or any of his employees or subcontractors or the employees of such subcontractors.

As the contract was originally drawn the contractor was likewise required to assume the cost of meeting the valid legal claims of employees or others for damages due to the negligence of the contractor's employees. In the final form of contract, however, the Commission agreed to assume two-thirds of this cost. It was not until after mature consideration that the Commission consented to adopt this course. It became obvious from the general attitude of the contractors and of the indemnity companies on this subject that the Commission would either have to assume a moderate liability in this regard or else pay for these negligence claims perhaps many times over in the form of enhanced bids which the contractors would otherwise have been required to submit. The legal liability for injury claims is very much less upon the Isthmus than under the laws of any State of the Union. The courts there, for example, have held that under the Spanish law the master is not responsible for the negligence of

his servants who disobey his orders. A cause of action does not survive in the case of wrongful death. Trials of such claims are held before experienced judges alone, and up to the present time the number of these claims even against the railroad company, which is subject to suit, and the cause of many serious accidents upon the Isthmus, has been extremely small. The question, therefore, whether the Commission should assume a portion of these claims became one of expediency alone, and the argument on this point, in view of the unreasonable attitude of indemnity companies, who were asking from 3 to 5 per cent of the pay roll of the contractor to insure him against loss in this regard, seemed to definitely settle this question in favor of some concession. The whole point, however, was not conceded. A liability of one-third of the cost of meeting these claims is still left with the contractor, and that it is thought will be sufficient to entail upon him a proper degree of care in the prosecution of his work.

The contractor is paid on or about the 15th day of each month for the cost of the actual construction work done by him during the preceding calendar month; but the cost of the organization of the contractor, his administration, legal, and general expenses, interest, taxes, cable service, and all expenses due to his own negligence or inefficiency, with the exception of the provision as to the personal-injury claims above referred to, and all other expenses not directly connected with the construction work carried on by him under the contract, are excluded from this cost. The items thus excluded must be paid by the contractor out of his capital or out of the percentage otherwise payable to him. The aggregate amount of these payments to be made by the contractor upon his own account will, of course, be considerable. It has been estimated at from 1¼ to 5 per cent of the percentage payable to the contractor under the contract.

The completion of the canal at the earliest practicable date has always been the prime consideration with the Commission. Closely connected therewith, in many aspects a direct consequence of expeditious construction, has been the question of economy. If the contractor were paid his percentage simply upon the cost of the work performed by him, as has been the usual practice, the incentive to quick and economical construction would, it is evident, be nothing like so great as under the scheme provided for in the present form of contract. The great spur of self-interest would be wholly lacking.

The contract provides that the percentage is to be paid upon the total estimated cost of the work that the contractor is called upon to perform under the contract, excluding from the estimated cost charges which the contractor is compelled to assume himself, and excluding all allowances for losses and damages attributable to acts of himself and employees and all allowances for contingencies. This estimate is provided to be made by an engineering committee, composed of two engineers of approved standing nominated by the contractor and three by the Commission, one of whom shall be the chief engineer of the Commission and the chairman of the engineering committee. The cost of none of the plant or materials supplied or services performed by the Commission, of course, enters into this estimate; and upon this part of the total cost of the canal, as heretofore stated, the contractor draws no percentage. The provision excluding the Com-

mission from adding to this estimated cost the usual allowance for contingencies is one which aroused considerable opposition among the contractors; but the very design of the present form of contract was to exclude, as far as possible, the element of contingency as a risk to be assumed by the contractor. The constitution of this committee was a matter of such high importance that it was deemed important that a majority of it should be composed of engineers appointed by the Commission, and for similar reasons the Commission refused to concede that a unanimous decision should be required of this committee.

Upon the estimated cost as thus fixed, as has already been stated, the contractor's percentage is paid; but, should the cost exceed this estimate, he forfeits from this percentage one-half of 1 per cent for each $5,000,000 by which the estimated cost is exceeded. To illustrate: The lowest bid for the construction of the canal submitted under this contract was at 6.75 per cent of the estimated cost. If the contract should be awarded under this bid and the actual cost should exceed the estimated cost by $10,000,000, the contractor would be paid only 5.75 per cent upon the estimated cost. On the other hand, if the actual cost falls below the estimated cost, the contractor, in addition to his other percentage, gets one-third of the saving. If the actual time of completing the canal exceeds the estimated time, the contractor forfeits $100,000 a month as liquidated damages; if the time is less than the estimated time, he is paid a corresponding premium of $100,000 a month. It is entirely obvious that there is the greatest motive for cooperation between the contractor and the Government under this arrangement to improve upon the estimates of both time and cost. Laying aside for the moment the great political and commercial advantages to the United States of an early completion of the canal, which can scarcely be estimated, the actual saving in cost, should the canal be completed within less than the estimated time, would be several times more than the premium which the Government under this circumstance is required to pay to the contractor. The bonus that the contractor receives in case of a reduction in the estimated cost of the completion of the canal requires no explanation, as from the very terms of that provision it is apparent that the Government saves twice the amount that is gained by the contractor.

It is possible from data now accumulated to estimate, with perhaps as approximate a degree of accuracy as has ever been possible in the history of an undertaking of this character, the cost and time required for completing the canal, provided that current conditions, both physical and personal, continue unchanged; but this is an assumption of course contrary to all reasonable belief, and the contract therefore proceeds to provide for a modification of the estimates where a change of plan renders it necessary or where the intervention of great emergencies renders the original estimates inequitable. The committee in making their estimates formulate in advance a rule by which these estimates may be changed, accordingly as the work is carried on in one, two, or three shifts a day; but it is further provided that, if the annual average scale of wage, after the exercise of due economy on the part of the contractor, substantially exceeds or falls below that taken as a standard by the engineering committee in making their estimates, the estimates, with the approval of the President, may be amended by the original engineering committee, or by a new one

appointed in its place. Likewise, with the approval of the President, the estimates may be amended at the instance of either party, should it appear that the original estimates were based upon physical data so erroneous as to materially affect the estimated cost and time of construction, or that they have become substantially inequitable by reason of the intervention of an act of God or for any other material cause which shall not have been taken into account by the committee in making their estimate, or for which the contractor is not responsible.

The present plans do not contemplate the construction of breakwaters or certain auxiliary works in connection with the canal. If it is decided to construct either breakwaters or further auxiliary works, the contract provides that it shall be done by the contractor under the same terms as the main work is undertaken, and that supplemental estimates of the time and cost of completing the additional works shall be made.

Immediate progress under the contract by the contractor is provided for by requiring that he shall begin the work of canal construction within sixty days from the signing of the contract; that he shall within ten days thereof nominate his two representatives upon the engineering committee, and that the said committee shall proceed to fix the estimates of the time and cost, if possible, within ninety days, but in any event within six months from the signing of the contract. An adjustment of the estimates is arranged for, however, to allow the contractor to begin work at any time.

The interests of the Government are rigidly protected by the article upon the subject of the contractor's default. The Chief Engineer is permitted to declare him in default if he neglects to proceed with reasonable diligence, and fails to keep employed upon the work a force of workmen sufficient to complete it within at least 20 per cent more than the estimated time; if he fails to do the work, in the judgment of the Chief Engineer, in a workmanlike manner, or if he become insolvent.

It might very well happen, however, that an unsatisfactory contractor, without actually violating the contract, or without giving the chief engineer of the Commission just ground to put him in default, might so loosely and carelessly carry out the contract, or might from personal reasons render himself so unacceptable to the people of the United States that a termination of the contract, even when the contractor was not in default, would become desirable. Indeed, it is conceivable that political conditions might arise—a state of war, to illustrate—which might render it advisable for Congress to suspend or to terminate outright the operations of the contractor upon the canal. The contract therefore provides for a voluntary termination thereof, even when the contractor is not in default, upon the terms of paying the contractor a premium of $250,000, and 1 per cent additional upon the work performed by him, provided the contract should be less than one-third finished. In many respects it is thought that this provision will be a greater spur to faithful, conscientious, and diligent performance by the contractor than even the system of penalties and awards to which reference has above been made.

Upon substantially all questions which arise under the contract, the chief engineer is made the first arbiter. From the chief engineer an appeal lies to the chairman or to the cabinet officer to whose

supervision the work is intrusted, if the offices of chairman and chief engineer should be at any time consolidated; and further, by implication, to the President and to the Congress of the United States. The device of an arbitration board was expressly excluded as being a cumbersome, indirect, and unsatisfactory method of settling differences, a view in which the most intelligent contractors have concurred.

In the performance of this contract the Government is secured by a bond for $2,000,000, and by a further provision that the contractor shall have available for the work of carrying out the construction of the canal a capital of $3,000,000, apart from the capital required to raise the bond. When it is considered that, under the terms of the invitation accompanying this contract, the association of contractors qualified as bidders must be composed of substantial contractors whose combined experience covers the entire field of the work to be performed, and that there have been found two such associations who are willing to risk $5,000,000 under the terms of this contract, it is apparent that the people of the United States should have no small assurance that the construction of the canal under the proposed method will be safely and economically carried out.

The almost constant discussion of this question during a period of nearly six months with the best qualified American judgment on the subject has suggested the following advantages of the contract system:

1. Recourse to the trained labor organizations of large associations of contractors, and right to call upon men with whom the contractors themselves have had many years of actual experience, and upon whose fidelity and skill they have been taught by experience to firmly rely. These advantages the Government has not been able to obtain, and can not obtain except for a period of several years, during the present period of active employment of labor in the United States.

2. The combined experience of a number of contractors who have been successful in large undertakings, and which must necessarily be broader and more comprehensive than the experience of any one man or two men, however able, who might be directly employed by the Government to carry on the work.

3. A protection against the constant pressure, to which the Government is subjected, for increase in wage and privileges from all classes and in every quarter. Already the Government is paying on the Isthmus to its skilled workmen upon an average not less than 50 per cent, in many cases 100 per cent, more than they are receiving in the United States, and, nevertheless, there is a constant agitation carried on, not only directly with the officers of the Commission, but through every other conceivable channel, for an increase in wage. Skilled employees upon the Isthmus necessarily contrast themselves with skilled employees of the Government elsewhere, who are a favored class and constantly demand privileges with respect to holidays and vacation leave with pay, increased pay for overtime, and similar privileges, which doubtless never could be pressed were they the employees of a private concern.

4. Continuity of the construction work. It must be obvious that when the Government is compelled to rely very largely upon one or more heads of Departments to carry on this work, it must have constantly before it the possibility of embarrassments due to the withdrawal from the work, from often unavoidable and wholly

excusable causes, of important supports. If this is apt to entail an embarrassment where the change in control is due to perfectly legitimate and well accepted excuses, how much greater would it be if the Government should ever by chance be subjected to the caprice or whim of unreasonable employees?

5. Definiteness in cost and time. With the contract signed and supported by a substantial association of leading American contractors, with their private fortunes to the extent of $5,000,000 pledged to its performance, the people of the United States will possess an assurance more reasonable than any that it is possible to give them otherwise of a fixed time and cost for the completion of the canal. The progress of the work at times is actually hampered by an impression, unfortunately widespread, that this is a work which is likely to hang on from year to year, to be finished, if at all, in the uncertain future. With an association of practical men of high standing in their profession, pledging their fortunes and their time to the completion of the canal within certain definite limits, it can not be said, indeed, that the uncertainty of the future is wholly eliminated, but it can be safely contended that it is immeasurably diminished.

6. If the United States were now to attempt to construct the canal by direct labor there would always be a considerable portion, and perhaps a majority, of our people who would believe, in accordance with past experience, that however good the accomplishment it could have been done better and more cheaply under some form of contract. The present plan presents the only safe method by which this important question can be settled. At a comparatively small expense to the United States Government, with very little inconvenience to the plan should the scheme prove impracticable, with scarcely any delay to the work or disorganization of the Government's forces upon the Isthmus, the Government under the present form of contract may actually test the efficiency of the contract method. If the contractor succeeds, the judgment of that large element of the community which has approved this method is vindicated. If he dallies, under the provision for the voluntary termination of the contract, the Government can be again placed in full control, with little inconvenience to itself and at the trivial cost of paying $250,000. The circumstance that the Government retains control of so many of the functions that are to be discharged upon the Isthmus—the sanitary department, the government, the furnishing of supplies, and the maintenance of plant—requires it to maintain always upon the Isthmus the framework of an organization easily expanded to take over the whole task.

7. It speaks highly for the intelligence of our public officials and for the public sentiment which supports them, that the work of constructing the Panama Canal has up to the present time been conducted strictly as a nonpartisan enterprise. It has been the design of those at the head of the Government, and of the Congress itself, to conduct this work just as the work of the great private corporations of this country is conducted—as a business proposition, pure and simple. Without anticipating that this wise policy will ever be departed from, it can not be denied that if the construction of the canal be now settled by contract a seal will be placed upon this policy which would be difficult for future administrations to break.

(The following papers are also, by direction of the committee, printed as part of the record:)

WASHINGTON, D. C., *August 29, 1906.*

SIR: I beg to transmit a proposed invitation for bids to complete the construction of the Isthmian Canal upon a percentage basis, including as a part thereof, for greater convenience of consideration, the terms of a contract to be entered into thereunder.

As to the general advisability of contracting the work of completing the canal, we know from experience that the difficulties to be overcome in the successful prosecution of any great work are in direct proportion to the magnitude and complexity of the enterprise. Furthermore, experience and observation teach that the best results in any field of human activity are accomplished by those most skilled in that particular field of human endeavor.

The physical construction of the Panama Canal is, all things considered, the greatest task of modern times. It is in the highest degree exceptional in magnitude, complexity, and cost. In order, therefore, to most successfully, economically, and quickly finish this great work there should be associated with the Commission the best trained talents of the world in each particular department of the undertaking.

The question may be asked, Why does not the Commission gather together experts in each branch of the work, and with them as heads create its own organizations and do the work by day labor? If the elements of time and cost did not enter so vitally into the undertaking, the Commission might do this; but because of the unprecedented and greatly extended industrial activity of the time, and the consequent violent competition for all classes of superintendents, foremen, subcontractors, skilled mechanics, and even ordinary laborers, it would take the Commission years to secure men and build up departmental construction organizations which would equal in efficiency those now controlled by the leading contractors of the United States.

If, therefore, the Commission, by associating with it the best trained construction men available, can receive the immediate benefit of the existing organizations which these men control and which they have spent years in perfecting, and can by reason of their assistance complete the canal in shorter time and for less money, is it not the part of wisdom and sound business judgment to do so?

If the wisdom of contracting the work of completing the canal be conceded, the question remains, What form of contract is best?

Whether—

(1) To divide the work into sections and let each part to a separate firm of contractors; or

(2) To let the entire work to one firm or company on the basis of unit prices; or

(3) To let the actual work of construction to an association of contractors, each member of which will be an expert in some branch of the work, on a percentage basis.

Before discussing the relative merits of these various forms of contract it may be well to describe the actual work to be done under the agreement.

It is clear that under any character of contract it would be incumbent upon the Government to reserve to itself on the Isthmus the great departments of government, sanitation, and engineering. With a complete staff organized for this purpose it is easy for it to

assume other obligations scarcely less essential to the welfare of the work, and, indeed, almost a part of its governmental duties. The control of quarters, and of the subsistence department, so directly connected with the health and well-being of canal employees, must be retained directly; or if the subsistence department be turned over to the contractor it must still be subjected to a rigid supervision. In no event can the contractor be allowed to make of this department an independent source of profit. The retention of the entire commissary department, needed for the supply of the Commission's own men, becomes in this connection further advisable. The elaborate construction plant which the Government has installed, and its maintenance, render likewise expedient the retention of the department of materials and supplies. The Panama Railroad, with its commercial business extending to all parts of the world, can not wisely be turned over to the contractor. With all these facilities thus retained by the Government, it becomes possible for it, with little additional expense, to supply at a very much lower cost than any contractor could the raw materials for the canal, the careful selection of which, uninfluenced by consideration of profits, is admittedly a matter of first importance.

Upon general grounds of policy, and of an immediate and far-reaching economy as well, it therefore seems advisable to confine the work to be done by the contractor to actual construction. These considerations necessarily exclude the idea of contracting for a finished canal as a whole, where the material, as well as the labor and all other items entering into the cost, shall be furnished by the contractor.

As to the best form of contract applicable to the work of construction proper:

The chief objection to the first proposition, viz, that of dividing the work into sections, and letting each part to a separate firm of contractors, is that there are so many perplexing elements and questions entering into this work—such as the control of labor in supply and price, repairs to and maintenance of plant and equipment, and the necessary conflicting relations of so many contractors to the Panama Railroad, as to make the task of preventing the most serious complications between these antagonistic interests under that plan a hopeless one.

There is also the further serious objection that even after the utmost precautions are taken, one or more of the contractors is certain to prove unsatisfactory, to the confusion and delay of part of the work; and an undue delay to any one part of the work means a delay to the whole.

The objection to the second alternative, viz, that of letting the work as a whole to one firm or company on a basis of unit prices, is that it would cost too much. Any contractor who successfully carries out this great work will be entitled to a fair profit, but to his estimate of cost and fair profit he must add, if bidding on unit prices, and honestly intending to carry out his contract, a substantial increment to protect himself against unforeseen contingencies and possibly severe losses. The contract thus becomes to a great extent speculative; but while it certainly is not desired that an undertaking of so much consequence as this should be the contractor's ruin, with a consequent disorganization of the work, neither is it desired that it become a source of enormous and unreasonable profits at the Govern-

ment's expense, as would be the case if the contingencies the contractor guarded against in his estimates did not occur.

This brings us to the consideration of the third proposition, viz, that of letting the actual work of construction to an association of contractors on a percentage basis.

As outlined in the accompanying papers, this plan contemplates a competition for the work between two or more groups of contractors, each group composed of contractors who have achieved a significant success in at least one of the departments of construction involved in the present undertaking and whose combined experience covers the whole task. By the terms of the invitation proposals by single individuals or firms whose experience and whose organizations must be relatively limited are therefore discouraged.

The contractor who receives the award will be paid an agreed percentage upon the estimated reasonable cost of the actual construction work as fixed by an engineering committee, of whom the contractor will name two members and the Commission three. This committee will likewise, from all available data, estimate a reasonable time for the completion of the canal; and a system of premiums and penalties to be paid to the contractor, accordingly as the work is completed within or beyond such estimated cost and time is provided for. The amount of percentage to be paid the contractor fixes the basis of competition.

This plan is not novel. It is being employed increasingly by the oldest, largest, and most successful corporations in the country. Its advantages are many.

(1) The Government will get the benefit of the combined efforts of the best and most experienced contractors in the world, each in charge of a department in which he is a specialist and cooperating with other specialists, because all are sharers in results, to bring the whole work to the earliest and most successful conclusion.

(2) The Government will secure the cooperation of these powerful interests in keeping full the ranks of foremen, locomotive engineers, steam-shovel men, and mechanics of all classes, and with the best men of each class.

(3) The Government will know exactly what the work costs in every part and as it progresses, and will know it is only paying a fair and reasonable profit on same.

(4) The plan offers every incentive for speedy and economical construction by penalizing extra time and cost and rewarding better than contract performance as to either. The Government can well afford to pay bonuses on time, as the annual interest saved to it will after five years be double the amount of bonus paid per year.

(5) By retaining control of the work and exercising strict supervision through its engineering force the Government will protect itself against cheap or faulty construction.

(6) The financial responsibility of the association of contractors will be beyond question, and its bond for $3,000,000 will amply protect the Government in so far as a bond can be made a protection.

(7) The contract will be more flexible. It will not be necessary to settle in advance all the main details of the work which could not subsequently be modified in material respects under any other form of contract save with the consent, perhaps unattainable, of the contractor and his sureties. Wide departures from the general plan may

subsequently be made without affecting the real interest of either side. Points which at the outset might otherwise be difficult, if not impossible, to adjust may be disposed of as they arise.

(8) Friction will be avoided. Claims and counterclaims inevitably attendant upon changes in the plans and specifications, with an accompanying train of contentions, will to a great extent be eliminated.

(9) Probable saving to the Government. No great undertaking, covering a long period of time, has ever been accomplished without the discovery, during its development, of new methods and machinery which have shortened the time and cheapened the cost of the undertaking. American inventive genius is not dead; history will repeat itself; and the time and cost of completing the canal as estimated will in all probability be reduced by the application of new principles which will be discovered as the work progresses. It is conceivable that the Government may receive, as the fruits of the system of rewards embraced in this plan, savings sufficient to offset the entire percentage required to be paid the contractor on the estimated cost of the work.

(10) Finally, a termination of the contract should it become necessary, would be less disastrous to the contractor, while an effective resumption of the work would be made easier to the Government, owing to its close relations thereto.

In view of the foregoing considerations, I strongly recommend that the inclosed invitation for bids to complete the construction of the canal on a percentage basis be issued.

Yours, very truly,

T. P. SHONTS,
Chairman Isthmian Canal Commission.

The SECRETARY OF WAR.

ISTHMIAN CANAL COMMISSION.
OFFICE OF ADMINISTRATION.
Washington, D. C., October 9, 1906.

INVITATION FOR PROPOSALS TO COMPLETE THE CONSTRUCTION OF THE SHIP CANAL UPON THE ISTHMUS OF PANAMA BETWEEN THE CARIBBEAN SEA AND THE PACIFIC OCEAN.

The Isthmian Canal Commission, under authority of an act of the Congress of the United States, approved June 28, 1902, the Executive orders issued by the President of the United States and the laws enacted by the Isthmian Canal Commission thereunder, and subject to all limitations imposed by the said acts and orders and by law, invites sealed proposals for the completion of the construction upon the Isthmus of Panama of an eighty-five-foot lock level ship canal, having a minimum depth of forty-one feet and a minimum width at the bottom of two hundred feet, between deep water in the Caribbean Sea and deep water in the Pacific Ocean, subject to the provisions stated in the draft of proposed contract annexed hereto.

I.—*Basis of proposal.*

1. Proposals must be expressed in terms of a percentage upon the estimated cost of the construction, fixed as hereinafter provided, for which the contractor will agree to do the work.

2. Proposals must be inclosed in sealed envelopes marked "Proposals for completing the construction of the Isthmian Canal," and must be filed at the office of the Isthmian Canal Commission, Washington, D. C., not later than 12 m., January 12, 1907, at which time and place all proposals will be opened in the presence of the proposers.

II.—*Qualifications of bidders.*

1. Any association of American contractors in whatever form organized, legally competent to contract, and having an available capital over all debts and liabilities except those reasonably assumed to furnish the bonds hereafter required to be given, of five million ($5,000,000) dollars, is qualified to submit proposals.

2. Each proposal must be accompanied by a certified check on or certificate of deposit in a bank or trust company of the United States acceptable to the Isthmian Canal Commission, and made payable to the order of the chairman thereof, or by bond, in good security, in form attached, for the amount of two hundred thousand ($200,000) dollars. Such checks or certificates may be held, deposited, or collected by the Commission in its discretion. The same, or their proceeds, will be returned to unsuccessful bidders upon the rejection of their bids, and to the successful bidder upon the formal execution of a contract with the Commission in the form hereto annexed, secured by bond with approved security in the sum of two million ($2,000,000) dollars, for the faithful performance thereof. Should the successful bidder fail to enter into such contract within fifteen days after the acceptance of his bid, such check, certificate of deposit, or the proceeds thereof, shall be forfeited, or the bond substituted therefor shall become forthwith payable, as liquidated damages for said failure.

III.—*Bonds.*

1. The bidder shall submit with his proposal the names of the surety or sureties whom he proposes to give upon the bond to secure the performance of his contract, accompanied by a statement from them that, should the award be made to the said bidder, they will execute the bond for the performance of the contract in the form hereto annexed. Among the conditions contained in said bond shall be a provision that the surety shall not be discharged by reason of any failure of the Commission to give the contractor or the surety any notice provided for under the proposed contract; a provision that the surety shall not be released by reason of any change in the terms of the said contract, but that any such change shall only be a ground for reducing the liability of the surety under the contract to the extent to which the surety can show that the damages for which it is answerable have been enhanced thereby; and a provision that, in any suit on the bond, any award or assessment of damages by the Chief Engineer shall have the same effect against the surety as against the contractor.

2. If for any cause or at any time the surety or sureties given by the contractor should be deemed insufficient by the Commission, sureties satisfactory to the Commission shall be substituted within thirty days after notice to that effect by the chairman of the Commission.

IV.—*General directions to bidders.*

The Commission in selecting the bidder to whom it will award the contract hereunder, will exercise its discretion for the purpose of securing a contractor who shall be capable in its judgment to properly and efficiently fulfill the conditions and requirements of the proposed contract. To aid the Commission in the selection of such contractor, each bidder must fully state what organization, facilities and experience he commands for undertaking the work, and with what organizations and credit or means of credit he will carry out such contract. The names and addresses of all persons interested with the bidder in his proposal shall be submitted with his proposal. If partnerships are interested, the names and addresses of the firm members shall be given. If corporations are interested, a certificate showing the place of organization of the corporation, the amount of capital stock paid in, the excess of its assets over all liabilities and the names and addresses of its officers and directors shall be furnished. The proposal shall also state that it is made without connection with any other bidder; that it is in all respects fair and free from collusion, and that no Member of Congress, official, or employee of the Government of the United States, of the Canal Zone, or of the Isthmian Canal Commission is interested therein; and it must also be sworn to in the form annexed before a notary public or other officer authorized to administer oaths.

V.—*Information furnished by Commission.*

Plans and specifications, in so far as they have been adopted, will be supplied prospective bidders upon demand, but must be regarded as a general guide only and not as conclusively binding upon the Commission. The Commission will also afford the freest opportunities, both in the United States and on the Isthmus, for the investiga-

tion of the Commission's working force and the terms under which each member thereof is employed, for the inspection of all contracts entered into or obligations assumed by the Commission, and for the examination of the state of the work and the conditions upon which it may be expected to be carried on.

VI.—*Rejection of bids.*

The Commission reserves the right to reject any bid. In case none of the bids is satisfactory the Commission will reject all and either throw open the proposals to foreign competition or proceed with the work without contract.

T. P. SHONTS, *Chairman.*

PROPOSAL.

The ISTHMIAN CANAL COMMISSION,
Washington, D. C.

SIRS:

——— ——— hereby propose to complete the construction of a ship canal upon the Isthmus of Panama, between the Caribbean Sea and the Pacific Ocean, subject to all the conditions and requirements contained in the circular invitation of the Isthmian Canal Commission, as reissued December 15, 1906, and the terms and conditions contained in the form of contract thereto annexed, which are made a part of this proposal, for —— per centum upon the estimated cost of the construction to be fixed as in said contract provided; and ——— agree that if this proposal should be accepted, ——— will, within fifteen (15) days thereafter, enter into a contract for the completion of the said canal secured by bond as in the forms annexed.

The following representations are made in compliance with the requirements of your invitation for proposals, and are warranted to be correct:

(1) Names and addresses of all persons interested in this proposal.

[If partnerships are interested, give the names and addresses of the firm members; if corporations are interested, give the names and addresses of the officers and directors.]

(2) Financial standing, credits, and means of credit of individuals, partnerships, and corporations interested in this proposal.

[If a corporation is interested, a copy of the articles of association should be attached, together with a certificate showing the amount of capital stock paid in and the excess of assets over all liabilities. If a partnership is interested, a certificate should be attached showing the capital of the partnership and the excess of its assets over all liabilities. Similar detailed information should also be furnished as to individuals interested in the bid.]

(3) The facilities for prosecuting work commanded by individuals, firms, or partnerships interested in this proposal and their past experience in carrying out substantial construction contracts.

This proposal is made without connection with any other bidder, is in all respects fair and free from collusion, and no Member of Congress, official or employee of the Government of the United States, of the Canal Zone, or of the Isthmian Canal Commission is interested herein.

——— ———.

This day, before me, a notary public for ——— ———, appeared ——— ———, to me personally known, and known by me to be the individual whose signature is annexed to the foregoing proposal, and said that the statements therein contained are true.

Witness my hand and seal this —— day of ———, 1907.

——— ———, *N. P.*

(When surety company is surety.)

BOND ON PROPOSALS.

Know all men by these presents, That we ——— ——— as principal, and ——— ——— (name of surety company) a corporation existing under the laws of the State of ——— ——— as surety, are held and firmly bound unto the United States of America,

in the sum of two hundred thousand dollars ($200,000), for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

CONDITIONS.

The conditions of the above obligation are such, that any award made by the Isthmian Canal Commission to the above-bounden principal, under a public invitation for completing the construction of a ship canal upon the Isthmus of Panama, shall be accepted by said principal forthwith, and the said principal shall enter into a contract for the completion of the construction of said canal, and give bond with good and sufficient sureties, to be approved by the Commission, for the faithful performance thereof in the forms annexed to said invitation. And the undersigned bind themselves, their heirs, executors, administrators, and successors, in case the said principal shall fail to enter into such contract and furnish such bond within fifteen (15) days after such award, to pay the said Isthmian Canal Commission for and on behalf of the United States of America two hundred thousand ($200,000) dollars as liquidated damages for such failure.

In witness whereof, the principal hereto has caused the same to be executed by its proper officer thereto duly authorized under a ——— ——— of its[a] ——— ———, dated the —— day of ———, 190—, and the surety hereto has caused the same to be executed by its proper officer thereto duly authorized under a ——— ——— of its[a] ——— ———, dated the —— day of ———, 190—.

Executed in triplicate this —— day of ———, 190—.

Attest:

——— ———
——— ——— [SEAL.]
——— ———

By ——— ———[b]
as its ——— ———
(Principal.)

——— ———
——— ——— [SEAL.]

By ——— ———
as its ——— ———
(Surety.)

[a] Board of Directors or other governing body of the principal. A copy of the by-law or of the record of proceedings of the governing body of the corporation, showing the authority of the officer or officers executing the bond for the principal, *must* accompany or be attached to the bond—the same to be certified by the custodian of such records under the corporate seal, to be a true copy. If the authority was given by resolution, enough of the records will be copied along with the resolution to show that it was adopted, and the entire matter copied (not simply the resolution) will be certified to be a true copy. If the authority is a by-law, the wording of the executing clause will be altered accordingly.

[b] President or other officer authorized to sign for the principal. A copy of the record of the selection of the officer or officers executing the bond for the principal, certified by the custodian of such records, under the corporate seal, to be a true copy, *must* accompany or be attached to the bond, unless the resolution authorizing its execution gives the names of the officer or officers, in which case no other evidence of their official character is required.

FORM OF CONTRACT.

An agreement for the construction of a lock-level ship canal upon the Isthmus of Panama between deep water in the Caribbean Sea and deep water in the Pacific Ocean, entered into this —— day of ———, 1907, between the United States of America by and through the Isthmian Canal Commission, hereinafter called the Commission, and ——— ———, the accepted bidder, under a public invitation for proposals to complete the construction of the said canal, hereinafter called the Contractor.

ARTICLE I.—*Work to be done by the Contractor.*

The work to be done by the contractor shall be construction work proper, and shall comprise the following items and all work of actual construction necessarily connected therewith:

1. Dredging, clearing, and excavating canal from the locks at either end of the canal to deep water.
2. Construction of the proposed dam at Gatun and of the dam or dams at or near the southern or Pacific end of the canal.
3. Construction of all locks and regulating works at either end of the canal and wherever located.
4. Dredging, clearing, and excavating canal from the dams at either end to the Culebra Cut.

5. Excavation and completion of the Culebra Cut and revetments and the approaches thereto.
6. Removal and reconstruction of the Panama Railroad upon lines of relocation to be fixed by chief engineer of the Commission.
7. Removal and transportation of all spoil of whatsoever character, whether by land or water, to such points or places, and the disposition thereof in such manner, as may be designated by the said chief engineer.
8. The quarrying, transportation, and dressing of all stone required for masonry work, the manufacture and transportation on the Isthmus of concrete, the transportation and preparation on the Isthmus of timber, or other materials, except finished metallic parts, used in the proper execution of the above work and constituting a part of the completed structure and the appliances adjunct thereto and necessary to the proper maintenance and operation thereof.
9. All work herein required to be done shall be performed according to the plans and specifications furnished by the chief engineer of the Commission; but said plans and specifications will be subject at any time to such alterations and changes as may be deemed advisable by the chief engineer or the Commission.

ARTICLE II.—*Extra work.*

Should the Commission, prior to the completion of the canal, decide to construct breakwaters at either end of the canal, additional reservoirs or dams, or additional auxiliary works of any character, the Contractor shall have the right to and, if required, shall construct the same upon the terms upon which he agrees hereunder to perform the work upon the canal proper; but a supplemental estimate of the cost and time for the completion of the said additional works shall be made by an engineering committee, such as is hereinafter provided for, in the same manner as the estimate is provided to be made by the original engineering committee of the cost and time required for the construction of the canal proper.

ARTICLE III.—*Plant and facilities furnished by the Commission.*

The Commission agrees to furnish, free of cost to the Contractor, plant, facilities, and means as follows:
1. All locomotives, cars, steam shovels, drills, cranes, dredges, tugs, scows, dumps, rails, ties, and track materials, electric light or power plants, and other machinery of a substantial character required to efficiently carry on the construction work, and necessary work animals and equipment; but not hand tools or machinery of a minor character usually carried in stock, save through its department of materials and supplies as hereinafter provided.
2. All raw materials put into the work, the machinery and appliances necessary for the operation and protection of the locks or other parts of the canal, but not the treatment, shaping, finishing, transportation upon the Isthmus, or incorporation into the work of such materials, nor the erection or assembling of such machinery upon the Isthmus; cement, explosives, oil, coal, fuel, and, at the election of the Commission, electricity for the proper operation of any rolling or floating stock or other machinery used by the Contractor in the performance of his work upon the Isthmus: *Provided, however*, That the Commission may, in its discretion, transfer to the Contractor the manufacture of cement or explosives, if it should be found that either can be properly made upon the Isthmus, and the manufacture upon the Isthmus of metallic parts of the locks and auxiliary works of the canal, the cost of such manufacture to be added in such case to the total estimated cost of the canal as hereinafter provided to be arrived at.
3. Construction tracks already built in a condition not less efficient than now existing; but additional construction tracks, including the relocation of those turned over to the Contractor, must be built by the Contractor.
4. Quarters for the proper housing of all necessary employees of the Contractor; but the Commission shall be allowed reasonable time for the construction of quarters additional to those now existing.
5. Warehouses for the storage of the Contractor's tools and supplies.
6. Hospitals and hospital service for sick smployees of the contractor.
7. Office buildings for the accommodation of the Contractor's clerical and administrative force actually employed upon the Isthmus in connection with the construction of the canal.
8. Transportation of the Contractor's employees, employees' families, and supplies over the Panama Railroad, and employees and employees' families over the Panama Railroad Steamship lines at rates not greater than one-half the regular published

tariff rates. The Contractor shall also be at liberty in all cases, where the transportation facilities afforded by the Panama Railroad Steamship Line are not sufficient for the needs of the Contractor's business, to employ such other lines of transportation as he sees fit, until such time as the Panama Railroad Steamship Line is in condition to resume or furnish sufficient service to the Contractor.

9. Free telegraph and telephone service upon the Isthmus necessary to the actual efficient discharge of the Contractor's business.

10. Free trackage rights over the Panama Railroad Company's tracks for the work trains of the Contractor, from canal cuttings to dump grounds, or docks when necessary, and return; and as a part of this obligation the Commission will assume the cost of constructing such additional trackage, yards, or other facilities of the Panama Railroad as may be essential to the proper execution by the Contractor of the work herein provided for, the amount and character of such work being always subject to the direction and approval of the chief engineer of the Commission.

11. Water for offices, engines, shovels, drills, dredges, and other purposes for which it is reasonably required for the prosecution of the work.

12. Commissary stores, which will be open to the Contractor and his employees upon the same terms as to the Commission's own employees. The Commission will also supply from its other departments, so far as it may have the same available, tools and supplies which it is not the duty of the Commission to furnish free hereunder upon the terms of cost plus the usual handling charges.

13. Mess-house privileges for Contractor's employees equal to those at any time extended to the employees of the Commission. The Contractor shall also have the privilege of taking over and operating upon his own account such mess houses, either directly or by contract with a third party, subject in all cases to the direction and approval of the chief engineer with respect to prices, privileges, and general methods, and subject to the duty to furnish to the Commission's employees accommodations in all respects equal to those furnished to the Contractor's own employees. Mess or lodging houses furnished by the Commission to the Contractor, or any subcontractor, shall be subject to daily inspection by the chief engineer or his agents, and all directions and modifications which the chief engineer may deem necessary for the proper housing and feeding of such employees shall at once be carried into effect by the Contractor. Any profit or loss arising from the operation by the Contractor of mess houses, shall be debited against or credited to the Contractor.

14. The equipment which the Commission under this article agrees to supply it will also maintain; and it will to that end operate and properly furnish and supply such machine and other shops as may be necessary, but this obligation shall not extend to the making of repairs which are ordinarily known as outside, yard, or running repairs, which must be made by the Contractor.

15. The Commission, to the extent to which its machine shops may be adequate, will manufacture or repair for the Contractor such minor machinery and tools as can be economically and conveniently manufactured or repaired at the said shops, charging the Contractor therefor actual cost plus 15 per cent.

16. The judgment of the chief engineer of the Commission shall in all cases be controlling as to the extent and character of the facilities to be supplied by the Commission under this article.

ARTICLE IV.—*Functions reserved to the Commission.*

The Commission will retain control of—

1. All engineering work in connection with the construction of the canal, including surveys and the general direction and control of the construction work to be done by the Contractor with the right to fully inspect same.
2. Municipal engineering, including the construction of waterworks, sewers, roads, and streets wherever located.
3. The governmental and police department.
4. The sanitary and hospital department.
5. The commissary department.
6. Mess houses, except in so far as the same may be taken over by the Contractor as hereinbefore provided for, and the inspection of the same in that event.
7. Quarters.
8. The construction and maintenance of buildings.
9. The operation of the Panama Railroad.
10. An auditing department, which shall have control over the books and accounts of the Contractor, with authority to direct the manner in which all accounts relating to expenditure upon the canal construction by the Contractor shall be kept and to which department the books and accounts of the Contractor shall at all times be open.

11. A department of materials and supplies.
12. And generally, all powers, rights, and privileges not herein specifically ceded to the Contractor.

ARTICLE V.—*To be supplied by the Contractor.*

1. The Contractor shall furnish and employ all labor, foremen, superintendents, clerks, general office staff, and furnish all tools and machinery of a minor character necessary to efficiently operate the plant and carry out the work to be undertaken hereunder.
2. He shall make all repairs commonly known as outside repairs upon equipment and machinery employed by him.

ARTICLE VI.—*Obligations to be assumed by Contractor.*

1. The Contractor shall begin the actual work of construction within sixty days from the signing of this contract.
2. He shall take over into his own employment all employees on the Isthmus upon the pay rolls of the Commission at the time that he begins work, except such employees as the Commission may reserve to its own use. Employees on what is known as the "gold list" taken over by the Contractor under this article shall not be discharged nor shall their salaries be reduced except for cause, and then only when their discharge or salary reduction is approved by the Chief Engineer of the Commission.
3. He shall assume and carry out all contracts that may have been entered into by the Commission for the supply and employment of foreign or other labor, and shall execute in connection therewith such agreements or papers as may be required by the Commission.
4. He shall scrupulously abide by all the rules and regulations that may be put into force from time to time by the sanitary department of the Commission, and shall issue all orders required of him by the Commission for the proper observance and enforcement of said rules and regulations.
5. He shall, on written notice from the chairman or Chief Engineer of the Commission, discharge for cause any employee who may be in his service.
6. He shall comply with all laws of Congress or of the government of the Canal Zone with respect to the hours of labor, character of employees, and other matters in so far as the same may be applicable in the work undertaken by him; and all provisions of law bearing upon the performance by the Contractor of this contract shall be regarded as incorporated into and made a part hereof, whether expressed or not.
7. He shall perform all work embraced in this contract in the most thorough and workmanlike manner, and subject to the approval of the Chief Engineer of the Commission, with the highest regard for the safety of life and property, and in accordance with the plans, specifications, and drawings furnished by the Chief Engineer of the Commission, and subject to his orders and directions.
8. No material shall be put into the work by the Contractor of which the Chief Engineer may disapprove; but failure by the Chief Engineer to disapprove of unsound materials or the improper preparation or use of material shall not exempt the Contractor from liability to the Commission for damage or extra expenditure occasioned thereby, unless the Contractor in doubtful cases shall have requested of the Chief Engineer in writing a definite approval of any particular materials or any specified preparation or use thereof and the Chief Engineer, after a reasonable time, has failed to act upon the request. The cost of replacing or repairing damages due to the use of defective materials or any specified preparation or use thereof after the Contractor has discharged his full duties under this section shall be reimbursed the Contractor as a part of the current payments to him, and shall be added to the estimated cost of completing the canal as fixed by the engineering committee hereinafter provided for.
9. He shall carry on the construction work, if required, during the night as well as during the day, and in such shifts as the Chief Engineer shall direct.
10. He shall, subject to such indemnity as is provided for in Article VII, assume and be responsible for all just legal claims for injuries or wrongs inflicted upon persons and property by his own act or that of any of his employees, except property and land damages necessarily occasioned by the orderly construction of the canal and auxiliary works.
11. He shall not assign or transfer this contract or any interest therein without the written consent of the Commission.
12. He shall not enter into subcontracts for the performance of the work to be undertaken hereunder without the written consent of the Commission; and as a condition precedent to seeking the consent of the Commission shall furnish the Commission with a written statement as to the nature of the proposed subcontract and the leading provi-

the work reserved to it, and the organization, administration, legal, general, and outer expenses of the Contractor for which he is not entitled to be reimbursed under the terms of Article VII, and shall make no allowance for losses or damages, legal or otherwise, attributable to the acts of himself or employees and subject to be sustained by him, nor any allowance for contingencies.

2. The engineering committee shall likewise, from similar data and investigations, estimate the reasonable time for the construction of the canal with the facilities afforded to the Contractor under the terms of this contract. In fixing the said time they shall assume that the Contractor will at all times employ, on a basis of eight hours a day for American labor and ten hours a day for foreign labor, a force of laborers and employees upon the actual work of construction or the superintendence thereof equal to the number that can be efficiently employed, having due regard to the progressive condition of the work, and that he will be supplied by the Commission with the plant hereinbefore described necessary to fully employ his working forces.

3. The committee shall also submit alternative estimates of time and cost, based upon night work and two shifts a day of ten hours each for foreign and eight hours for American labor, and also upon continuous work with three shifts a day of eight hours each, and shall formulate a rule by which these estimates may be increased, or diminished, according to the time that the work may be carried on upon one or the other of these several bases.

4. If, at any future time, the plans and specifications for the construction of the canal, as submitted to the said engineering committee, shall be materially altered in any respect, or if it shall be made to appear to the President of the United States that the estimates of the committee are based upon physical data so erroneous as to materially affect the estimated cost and time of construction, or that the estimates have become substantially inequitable by reason of the intervention of an act of God or a public enemy, or for any other material cause which shall not have been taken into account by the engineering committee in making their estimate, and for which the Contractor is not responsible, or that the annual average scale of wage, after the exercise of due economy upon the part of the Contractor substantially exceeds or falls below that taken as a standard by the engineering committee in making their estimates, and the estimates can not be amended by the application of any rule formulated by the committee under the requirements of this contract, the said committee, or a new committee formed in the same manner as the original committee, shall, upon written notice of either the Commission or Contractor, provided the same be given within sixty (60) days, or in the proper case upon notice from the President, promptly convene, and modify the estimate as to the cost or time, or both, by adding to or taking therefrom the cost or time fairly attributable to the changes made in said plans and specifications, to the use of such erroneous data, to such act of God or a public enemy, to such other cause, or to such change in the average scale of wage.

5. The construction of breakwaters, either to protect the Atlantic or the Pacific end of the canal, shall not be included in the estimate of the said committee of the cost and time of the construction of the said canal. Should the Commission subsequently decide upon the construction of breakwaters or upon the construction of any additional reservoirs or dams or other works, not provided for in the plans and specifications at the time of their submission to the engineering committee, supplemental estimates shall be made by the committee, or a similar committee to be appointed in its place, of the cost and time required for the construction of such breakwaters, reservoirs, dams, or other works upon the same basis as the estimates are made for the time and cost of the completion of the canal proper.

6. The estimates of the time and cost of the main canal construction work herein contemplated shall be completed, if possible, but with due regard to the importance of the subject, within ninety (90) days, and in any event within six (6) months from the signing of this contract, and shall fix the cost and time as of the date when completed. From the estimated cost, the cost of any construction work upon the canal done by the Commission after such date shall be deducted, and to the estimated cost the cost of any work done by the Contractor before such date shall be added.

ARTICLE X.—*Default by the Contractor.*

1. Should the Contractor at any time fail to observe any of the material obligations of this contract, or should he fail at any time to proceed with reasonable diligence in the construction of the canal, so that after executing delays due to acts of God or public enemies, or an order or default of the Commission, or to any other cause which under the terms of this agreement shall entitle the Contractor to an extension of the estimated time for completion, the canal, in the judgment of the Chief Engineer, can not be completed within twenty per centum more than the estimated time; or should the Con-

tractor fail to keep employed at work upon the canal a force of workingmen sufficient in the judgment of the chief engineer to complete the canal within twenty per centum more than the estimated time, or should the Contractor within three months after notice from the chief engineer fail to increase the working force to any extent prescribed by the chief engineer within the number that can be efficiently employed upon the said work, having due regard to its progressive condition; or should the work done by the Contractor in the judgment of the chief engineer be done in an unworkmanlike manner, or in violation of the directions of the chief engineer; or should any materials put into the dams, locks, auxiliary works or other parts of the canal by the Contractor contrary to the provisions of this agreement be unsound or defective, and such as in the judgment of the chief engineer are calculated to impair the structural strength and efficiency of the canal; or should the Contractor's current actual cost of construction at any time, in the judgment of the chief engineer, exceed by more than twenty per centum that part of the total estimated cost of construction properly proportionable thereto; or should the Contractor become insolvent or pass into the hands of a receiver; or should the Contractor fail to satisfy or secure any judgment that may be rendered against him within thirty days after the same shall go to execution, or become incapacitated for the proper discharge of his duty under this contract, by reason of legal or other complications, the Commission through the chairman may by ten days' written notice served upon the Contractor declare the Contractor to be in default.

2. In any case in which the Contractor is declared to be in default, as aforesaid, the Commission may (1) either allow the Contractor to resume work upon the canal, subject to such conditions, forfeitures, and penalties as it may impose, or (2) take possession of and assume control and direction of the work of the construction of the canal, and may complete it either directly through its own agents or employees, or (3) may recontract any unfinished work privately or by public advertisement upon the basis herein outlined, or on any other basis, to any contractor or contractors that it may select; and in any event may charge against the Contractor and his sureties the additional cost of doing the work which the Contractor agrees under his contract to do, and may collect the same from the Contractor or his sureties, as damages, and should the construction of the canal be delayed beyond the estimated time by the default of the Contractor, may collect, in addition, from the Contractor or his sureties for each month in excess of the estimated time the liquidated damages provided for under this contract.

3. And in any and all of the foregoing events, the Commission shall have the right to withhold pending the final adjustment, any balance otherwise due the Contractor and proceed in the courts of the United States against the Contractor or his sureties forthwith, or at any later period that it may deem advisable to collect any damages that it may be entitled to either in law or in equity, whether damages specified herein or damages additional thereto allowed by law: *Provided always*, That the aggregate damages for which the Contractor may be held liable under this contract shall not exceed the percentage and premiums otherwise payable to the Contractor and three million ($3,000,000) dollars in addition thereto.

4. The Contractor and his sureties covenant that in all cases where the Commission so elect the damages sustained by reason of the default of the Contractor may be assessed by the chief engineer, subject to review by the chairman of the Commission; and the final award of damages as determined by the chief engineer or chairman shall be paid to or recovered by the Commission from the Contractor or his sureties, under the terms of the Contractor's bond, or the Commission or the United States may sue to recover the actual damages sustained, treating the said award as *prima facie* evidence of the damages sustained and throwing upon the Contractor and his sureties the burden of showing that the said award was the result of fraud or collusion upon the part of the chief engineer or chairman, or that it was arrived at contrary to the provisions of this contract.

ARTICLE XI.—*Termination of contract when Contractor is not in default.*

1. Irrespective of any default upon the part of the Contractor, the Commission reserves the right to terminate this contract at any time in its discretion upon the terms of paying to the Contractor the entire cost of the work performed by him to such time, ascertained in the manner hereinbefore provided, the percentage earned by him upon such cost and two hundred and fifty thousand ($250,000) dollars additional: *Provided*, That the total amount payable to the Contractor, including debits against him authorized under the contract, shall not in any event be less than five hundred thousand ($500,000) dollars, and *provided further*, that should the Contractor have done at such time, in the judgment of the chief engineer, less than one-third of the work contracted to be done, he shall be paid one (1) per centum additional. At such time also an esti-

mate shall be made by the chief engineer to ascertain whether the work to such time has proportionately exceeded or fallen behind the estimated cost and time, and proportionate profits and premiums or deductions shall be credited to or charged against the Contractor accordingly.

ARTICLE XII.—*Decision of the chief engineer.*

The decision of the chief engineer in the absence of fraud, misconduct, or a palpable error apparent on the face of any decision or award, and to the extent that it shall not be modified by the chairman of the Commission, shall be conclusive and binding upon the contractor: (1) Upon all questions submitted under the foregoing provisions of this contract to his determination. (2) Upon the question whether there has been a substantial breach of contract upon the part of the contractor. (3) Upon the question whether the Contractor is in default. (4) Upon the character and extent of the damages sustained by the Commission or the United States from any breach of contract or default upon the part of the Contractor.

ARTICLE XIII.—*Definitions.*

1. "Commission" means the present Isthmian Canal Commission, or any successor thereof, or any individual, officer, or Department of the United States to whom or to which the duty of constructing or arranging for the construction of the Isthmian Canal may hereafter be intrusted by law or Executive order; and "Chairman of the Commission" means any successor exercising the chairman's present functions. All action reserved to the Commission hereunder may be executed and carried out by its chairman. Any rights secured to the Commission hereunder shall also be deemed rights secured to the United States of America, and, if that course be deemed advisable, may be enforced in the name of the United States.
2. "Chief engineer" means the chief engineer of the Isthmian Canal Commission, or any successor thereof, or any deputy or substitute that may be designated by the said Commission, or its successor. In all cases where action is provided to be taken by the chief engineer, similar action taken by the Commission or its successor shall be equally effective.
3. "Engineering committee" means either the original engineering committee, or any similar committee that may be appointed in its place; it not being contemplated that the engineering committee will be maintained as a permanent organization.
4. "Contractor" means contractors, or the employees of any contractor, or any subcontractor or employees when doing the work of the principal Contractor, or the successors or assigns of the Contractor.
5. "He," "his," or "him" means in the proper case "it" or "its," "they," "their," or "them."
6. "Surety" means "sureties," and whatever is required of any one surety shall be required of all.

In witness whereof, the Isthmian Canal Commission and ——— ——— have caused this contract to be executed in triplicate the year and date first above mentioned.

——— ———.
——— ———.

Attest:

——— ———.
——— ———.

[When both principal and surety are corporations.]

BOND FOR FULFILLMENT OF CONTRACT.

Know all men by these presents, that ——— ———, a corporation existing under the laws of the State of ——— as principal, and ——— ———, a corporation existing under the laws of the State of ——— as surety, are held and firmly bound unto the United States of America in the penal sum of ——— dollars ($———), for which payment, well and truly to be made, we bind ourselves, and our successors, jointly and severally, firmly by these presents.

Given under our hands and seals this —— day of ———, nineteen hundred ———.

CONDITIONS.

The conditions of the above obligations are such that if the said above-bounded ——— ———, or its successors, shall well and truly, and in a satisfactory manner fulfill the contract hereto annexed, for the completion of the construction of a ship

canal upon the Isthmus of Panama, and shall promptly make payments to all persons supplying him with materials and labor in the prosecution of the work contemplated by the contract, this obligation shall be void, otherwise shall remain in full force and virtue.

It is further agreed that the surety hereon shall not be discharged by reason of any failure of the Commission to give the contractor or the surety any notice provided for under the said contract, and that the surety shall not be released by reason of any change in the terms of said contract, but that any such change shall only be a ground for reducing the liability of the surety under the contract to the extent to which the surety can show that the damages for which it is answerable have been enhanced thereby; and that in any suit hereon any decision or assessment of damages by the chief engineer, to the extent that it may not be modified as provided in said contract, shall have the same effect against the surety as against the Contractor.

In witness whereof, the principal hereto has caused the same to be executed by its proper officer thereto duly authorized under a ——— of its ——— dated the —— day of ———, 190——, and the surety hereto has caused the same to be executed by its proper officer thereto duly authorized under a ——— of its ——— dated the —— day of ———, 190——.

Executed in triplicate this —— day of ———, 190——.

Attest:

——— ———

——— ——— [SEAL.]

——— ———
By ——— ———
as its ——— ———
(Principal.)

——— ———

——— ——— [SEAL.]

——— ———
By ——— ———
as its ——— ———
(Surety.)

[Indorsement.]

Proposal for completion of construction of ship canal upon the Isthmus of Panama. Submitted by ——— ———.

GENERAL INSTRUCTIONS TO BIDDERS.

1. Postage must be prepaid in full on all bids mailed to this office.

2. No person in the service of the Isthmian Canal Commission will render assistance in the preparation of proposals or supply information with respect to any actual or prospective bidders.

3. Proposals should be submitted on blanks furnished herewith. They must be signed by the bidder with his usual signature in full, and should give his business address. If proposals are made by a firm, the firm name should be signed by one of the members; if by a corporation, they should be signed with the name of the corporation, followed by the signature of an officer, who should file therewith evidence of his authority to sign the corporate name.

4. Bidders are warned that any modifications of conditions or requirements, or failure to comply with the requirements of the invitation, will subject the proposal to the risk of being considered informal, at the option of the Commission.

5. Before, but not after, the time for opening bids any bidder may, by written notice, withdraw his bid, which in that event will be returned to him unopened.

6. The Commission will not permit changes in bids after the hour for opening, nor will it assume the responsibility for making alterations or corrections therein at the request of bidders, whether such requests be received before or after the bids are opened.

7. Neither the laws nor regulations make allowance for errors, either of omission or commission. It will be assumed that bidders are fully informed of these conditions and requirements before submitting proposals, and no bidder will be relieved from the responsibility assumed under his proposal upon a plea of error.

GENERAL PLAN FOR THE CONSTRUCTION OF THE PANAMA CANAL.

he following plan is descriptive merely, and is intended only for the general information of bidders. The quantities of material are only approximate. Even the location and character of structures may be changed. It is, however, expected that

approximately exact information will be presented to or collected by the committee of five engineers, who, under the proposed contract, will estimate the reasonable cost and time for completing the construction of the canal.

The type of canal now partially constructed and to be completed under this contract is fixed by the act of June 29, 1906, which reads as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a lock canal be constructed across the Isthmus of Panama, connecting the waters of the Atlantic and Pacific oceans, of the general type proposed by the minority of the Board of Consulting Engineers, created by order of the President dated June twenty-fourth, nineteen hundred and five, in pursuance of an act entitled 'An act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans,' approved June twenty-eighth, nineteen hundred and two."

The general type of canal proposed by the minority of the consulting board is to form a summit level about 85 feet above the sea, which is to be reached by a flight of locks located at Gatun on the Atlantic side, and by one lock at Pedro Miguel with two others at La Boca on the Pacific side; the locks are all to be in duplicate. The summit level will be formed by the construction of a large dam at Gatun and a small one at Pedro Miguel. A second lake with a surface elevation of 55 feet will be formed on the Pacific side between Pedro Miguel and Panama Bay by the construction of a dam at La Boca, across the mouth of the Rio Grande, and another dam between Sosa Hill and high ground near Corozal.

The three sheets of drawings herewith, entitled Plates VIII, IX, and X, show the general features only of the canal. Plate VIII is a plan of the canal; Plate IX is a profile along its center line, and Plate X shows cross sections at various points along the line.[a]

I.

COLON SECTION.

From the Caribbean Sea to the mouth of the Mindi River a channel is to be excavated having a bottom width of 500 feet and a depth of 42 feet below mean tide. The line of this channel is shown approximately on Plate VIII. That sheet also shows a breakwater and protecting jetty. It is not intended at the present time to construct either the breakwater or jetty, and they may be omitted in whole or in part, or other works for the protection of the channel may be built. The channel may also be widened to 1,000 feet or more from the deep water in the Caribbean Sea to the mouth of the Mindi River.

The material to be excavated on this portion is mostly soft mud, and this can be excavated by dredging. Some of it may be coral rock. A part or all of this material may be deposited in the Gatun dam, hereafter referred to, if directed by the chief engineer. The estimated quantity of material to be excavated for the channel 500 feet wide is 8,455,000 cubic yards. The entrance to the old partially constructed canal is now used for construction purposes and will continue to be so used for this purpose. It may be widened and deepened to such extent as may be deemed necessary by the chief engineer. The amount of material to be excavated for this purpose may reach about 1,000,000 cubic yards.

II.

MINDI SECTION.

From the mouth of the Mindi River to the Gatun locks the canal is to have a bottom width of 500 feet and a depth of 42 feet below mean tide. The location of the work is approximately shown on Plate VIII. Some of this excavation can be made by dredging and some of it will be excavation in the dry. The total amount is about 11,000,000 cubic yards. It is believed that nearly one-third of it is indurated clay or rock and two-thirds ordinary earth.

III.

GATUN LOCKS.

The Gatun locks are located approximately as shown on Plate VIII. They are to be built in duplicate—that is, there are to be two sets of locks side by side. The lift will be overcome by a flight of three locks of 28½ feet ordinary lift each, or a flight

[a] Owing to the limited number of drawings available they will be supplied only to those who make special application therefor.

of two locks of 42½ feet lift each. Neither the details of their construction nor their exact location has yet been definitely fixt. At the upper end of the upper lock and the lower end of the lower lock guide walls will be constructed for the handling of vessels entering or departing. The estimate of quantities in the locks is based on a flight of three having a length of 900 feet and width of 95 feet. The size of the locks may be increased to 1,000 feet by 100 feet.

Excavation	cubic yards..	3,660,000
Back fill	do....	660,000
Concrete	do....	1,302,780
Cut stone	do....	5,700
Brick	do....	20,000
Timber	feet B. M..	130,000
Cast iron	pounds..	1,830,000
Steel gates	do....	29,230,000

No estimate of quantities for a flight of two has yet been made.

IV.

GATUN DAM.

The location of the Gatun dam is approximately shown on Plate VIII. This dam reaches from near the Gatun Hills, in which the locks are located, to the hill about 3,500 feet westward, in which the spillway will be located, and extends from thence in a broken line to the high ground westward. In the construction of this dam all trees, stumps, and roots from the site are to be removed and the surface excavated to such depth that the impervious material of which the dam will be composed will come into direct contact with that on which it is to rest. Other work to be done may be the cutting off of the flow of water through any pervious material that underlies the dam.

The object of this dam is to form a reservoir in which the floods of the Chagres will be received. Its area will be about 110 square miles. The dam will be constructed partly from excavations made for the canal, delivered by pumps or otherwise, wherever such material is deemed suitable. Other material will be procured wherever directed by the chief engineer. The dam is to have a height of about 135 feet above sea level. The width on top is to be 100 feet. The slopes above lake level are 1 on 2, and below this 1 on 3 on the lake side and 1 on 25 on the opposite side. Its length will be about 7,700 feet and the width at bottom about 2,625 feet. The total amount of material in the dam is estimated at 21,200,000 cubic yards.

V.

REGULATING WORKS.

Works for regulating the level of the lake will be located in the hill which lies about midway between the two extremities of the dam. These consist of a system of Stoney gates constructed on foundations of concrete. The gates proposed are almost exact counterparts of those built for controlling the flow of water in the lower end of the Chicago Drainage Canal. It is possible, however, that the size or location of these regulating works may be changed. The following is an approximate estimate of quantities entering in their construction, if located as shown on the plate herewith:

Excavation	cubic yards..	1,580,000
Concrete	do....	189,000
Metal in sluices	pounds..	5,000,000

VI.

LAKE SECTION.

From the Gatun locks to San Pablo, a distance of about 15½ miles, only a small amount of excavation will be required. The width of the channel for this distance will be at least 1,000 feet, and all growth within 50 feet of water surface of lake for that width must be destroyed or removed. The depth is to be 45 feet. Farther up the lake, as the amount of excavation necessary to obtain this depth increases, the width of the channel will be decreased, first to 800 feet for a distance of 3.86 miles, from near San Pablo to Juan Grande; then to 500 feet from Juan Grande to Obispo, a distance of 3.73 miles; then to 300 feet from Obispo to Las Cascadas a distance of 1.55 miles, where will

begin the Culebra cut. The total estimated amount of material to be excavated in this section is about 24,000,000 cubic yards.

The channel between Matachin and Bas Obispo may be narrowed 100 feet, in which case there will be a corresponding reduction in quantity of material to be excavated. About one-half of this may be rock.

VII.

CULEBRA SECTION.

From Las Cascadas to near Paraiso, a distance of 4.7 miles, the width will be 200 feet. This is the heaviest portion of the work and is known as "the Culebra cut." As the rock is of variable character, it may be necessary to build a protecting wall along a portion of it. It is not practicable, however, at the present time to make any estimate of the amount of concrete that may be needed for this purpose. The material to be excavated consists of rock of varying degrees of hardness, clay, earth, hardpan, and volcanic material, and the amount to be removed is estimated at about 39,000,000 cubic yards. This estimate is based on slopes of 3 on 2 above and 10 on 1 below the berm. It may prove that the character of the material is such that the slopes may be flattened or steepened and the quantities, therefore, increased or diminished.

VIII.

PEDRO MIGUEL SECTION.

From near Paraiso, the end of the Culebra cut, to the Pedro Miguel lock, a distance of 1.88 miles, the canal will have a width of 300 feet. The amount of material to be excavated in that section is 6,835,000 cubic yards. Some of it is rock and some is soft earth.

IX.

PEDRO MIGUEL LOCK.

The Pedro Miguel lock will have a lift of 30 feet. It will be in duplicate and will have approach walls constructed at each end. The details of the lock have not yet been determined. A short dam from the lock to the hill to the northward will be constructed to retain the water in the summit level. An approximate estimate of the quantities entering in the construction is as follows:

Excavation	cubic yards	1,170,000
Small dam	do	1,100,000
Back fill	do	390,000
Concrete	do	513,612
Cut stone	do	4,000
Brick	do	8,000
Timber	feet B. M.	85,000
Cast iron	pounds	732,000
Steel gates	do	19,500,000

X.

LAKE SOSA SECTION.

From Pedro Miguel lock the channel will have a width of 500 feet for a distance of 1.87 miles. It will then increase to 1,000 feet or more for a distance of 3.61 miles to near Sosa Hill on the shore of Panama Bay, where the Sosa locks will be located. Some of the excavation in this section is rock, and other portions is soft earth, easily handled with dredges. The total amount is about 1,680,000 cubic yards.

XI.

SOSA LOCKS

The Sosa locks are to be located approximately as shown on Plate VIII. They are to be in a flight of two with lift of 27½ feet each, and to be in duplicate. The details of these locks have not yet been determined, but the following is an approximate estimate of the quantities of material that will enter in their construction:

Excavation	cubic yards..	1,430,000
Back fill	do....	950,000
Concrete	do....	992,800
Cut stone	do....	6,000
Brick	do....	14,000
Timber	feet B. M..	145,000
Cast iron	pounds..	1,281,000
Steel gates	do....	37,180,000

XII.

LA BOCA SECTION.

A dam will be constructed across the Rio Grande from San Juan Hill to Sosa Hill, another from Sosa Hill to Corozal Hill, and a small dam from Corozal Hill to the high ground to the eastward. These dams will form a lake known as Sosa Lake. It has an area of about 8 square miles and will be provided with regulating works for discharging its surplus waters. The amount of material in these dams is as follows: La Boca dam, 6,300,000 cubic yards; Corozal-Sosa dam, 5,397,000 cubic yards. Each one of these dams may be constructed in whole or in part from material excavated from the canal. No estimate has yet been made for regulating works.

XIII.

PANAMA BAY SECTION.

From Sosa locks to the deep water in Panama Bay, a distance of about 4 miles, the channel is to have a bottom width of 500 feet and a depth of 50 feet below mean tide. The mean rise and fall of the tide is about 15 feet, but it may reach as much as 22 or 23 feet. The material to be excavated in forming this channel is believed to be nearly all soft. The estimated amount is 8,528,000 cubic yards.

XIV.

PANAMA RAILROAD.

The Panama Railroad will be relocated thruout almost the entire distance from the mouth of the Mindi River to Panama. Some heavy embankments will be required to cross certain portions of Gatun Lake. These embankments it is expected to build of material excavated from railroad cuts or from the prism of the canal.

XV.

SUMMARY.

The following is a summary of the estimated excavation and structural material in the canal; these quantities are only approximate estimates and may be varied considerably:

1. Colon section:			
From 42-foot curve M. S. L. in Caribbean Sea to Mindi, mile 0 to mile 4.55—			
Excavation 500 feet wide	cubic yards.		8,455,000
1. Colon section:			
Entrance to old canal	do....		1,000,000
2. Mindi section:			
Mile 4.55 to mile 7.15—			
Excavation 500 feet wide	do....		11,000,000
3. Gatun locks:			
Mile 7.15 to mile 7.74—			
Excavation	do....		3,660,000
Back fill	do....		660,000
Concrete	do....		1,302,780
Cut stone	do....		5,700
Brick	do....		20,000
Timber	feet B. M..		130,000
Cast iron	pounds..		1,830,000
Steel gates	do....		29,230,000

4. Gatun dam:			
Earth fill	cubic yards	..	21, 200, 000
5. Gatun regulating works:			
Excavation	do	.....	1, 580, 000
Concrete	do	....	189, 000
Sluices	pounds	..	5, 000, 000
6. Lake section:			
Mile 7.74 to mile 32.80—			
Excavation, 1,000 feet to 300 feet wide	cubic yards	..	24, 000, 000
7. Culebra section:			
Mile 32.80 to mile 37.50—			
Excavation, 200 feet wide	do	....	39, 000, 000
8. Pedro Miguel section:			
Mile 37.50 to mile 39.37—			
Excavation, 300 feet wide	do	....	6, 835, 000
9. Pedro Miguel lock:			
Mile 39.37 to mile 39.60—			
Excavation	do	....	1, 170, 000
Embankment or dam	do	....	1, 100, 000
Back fill	do	....	390, 000
Concrete	do	....	513, 612
Cut stone	do	....	4, 000
Brick	do	....	8, 000
Timber	feet B. M.	..	85, 000
Cast iron	pounds	..	732, 000
Steel gates	do	....	19, 500, 000
10. Lake Sosa section:			
Mile 39.60 to mile 45.08—			
Excavation, 500 feet to 1,000 feet wide	cubic yards	..	1, 680, 000
11. Sosa locks:			
Mile 45.08 to mile 45.49—			
Excavation	do	....	1, 430, 000
Back fill	do	....	950, 000
Concrete	do	....	992, 800
Cut stone	do	....	6, 000
Brick	do	....	14, 000
Timber	feet B. M.	..	145, 000
Cast iron	pounds	..	1, 281, 000
Steel gates	do	....	37, 180, 000
12. La Boca section:			
La Boca dam	cubic yards	..	6, 300, 000
Corozal-Sosa dam	do	....	5, 397, 000
13. Panama Bay section:			
Mile 45.49 to mile 49.72—			
Excavation, 500 feet wide	do	....	8, 528, 000

ISTHMIAN CANAL.

WASHINGTON, D. C., *February 14, 1907.*

MY DEAR SENATOR: At the hearing before the committee it was requested that the committee be supplied for its files with certain original documents relating to the preparation of the contract for the construction of the canal. I inclose a copy of draft of a proposed agreement, the substance of which was first submitted to the President in June last by Mr. Walston H. Brown, who claimed at that time to represent a syndicate of contractors who were willing to contract privately for the construction of the canal. Mr. Brown subsequently conferred with Mr. Stevens on the subject, and upon the Isthmus Mr. Stevens and Mr. Shonts discussed the contract, and the result of their deliberations is contained in the letter from Mr. Stevens to Mr. Shonts, copy of which is inclosed.

These documents contain the general idea of a percentage contract, with a system of penalties and awards based upon an engineering estimate as to a reasonable time for the construction of the canal. In preparing the original draft of the contract this general scheme of a percentage contract and of penalties and awards was adhered to. Other suggestions were adopted as far as possible, but in working out the details of this plan and fixing the mutual obligations and duties of the respective parties it was found that very little benefit was derived from any of the precedents, of which we had a number before us, or any original suggestions relative to the formation of the contract. After the contract was reduced to the form of a first draft by the chairman and myself, it was submitted to the criticism of a number of the leading contractors of the country, and ultimately of their counsel. After it had been printed in its revised form it was considered with great care by the President, Secretary of State, and Secretary of War, and later on certain changes were made, the main object of which was to reduce the contingent liability of the contractor. We found that in several respects, without sacrificing any of the real interests of the Government, the contract could be modified so as to eliminate in part and to greatly restrict in other respects this contingent liability, and thereby procure, without corresponding sacrifice, more favorable bids from associations of contractors.

Yours, very truly,

RICHD. REID ROGERS,
General Counsel.

Hon. J. H. MILLARD,
Chairman Committee on Interoceanic Canals,
United States Senate, Washington, D. C.

NEW YORK, *August 22, 1906.*

Hon. THEODORE P. SHONTS,
Chairman Isthmian Canal Commission, New York City.

MY DEAR SIR: As you requested, I inclose herewith a clear copy of the memorandum which was sent to the President.

I will ask the various members of the company for their references, and as soon as I receive them will forward them to you as you requested.

I hope you will feel at liberty to call upon me for any information or help that I can render, or if you should wish to consult with me at any time.

Yours, very truly, WALSTON H. BROWN.

UNION CONSTRUCTION COMPANY.

[Capital Stock, $12,000,000.]

Directors.—Arthur F. MacArthur, vice-president and general manager of MacArthur Brothers Company, Chicago, Ill.; R. J. Kilpatrick, president of Kilpatrick Brothers & Collins Contracting Company, Beatrice, Nebr.; Arthur McMullen, of Arthur McMullen & Co., New York, N. Y.; Jules Breuchard, of Coleman, Breuchard & Coleman, New York, N. Y.; Walston H. Brown, of Walston H. Brown & Bros. (successors of Brown, Howard & Co.), New York, N. Y.; Thomas A. Gillespie, of T. A. Gillespie & Co., Pittsburg, Pa.; R. G. Packard, of R. G. Packard Company, New York, N. Y.

Officers.—Walston H. Brown, chairman of board of directors; Arthur F. MacArthur, president.

Vice-president, secretary, treasurer, executive committee.

The above-named directors of this company are the active managing members of the respective firms which they represent, which firms are among the largest and most experienced and successful contracting firms in the United States, and the personnel of the directory has been selected on account of the well-known ability of the directors, who by long training and experience have put their firms into the first rank of American contractors through their intimate personal knowledge and experience in all the various classes of contracting work and engineering experience which will be required in the building of the Panama Canal.

A brief summary of some of the important work successfully undertaken and completed by the firms above mentioned is as follows:

MacArthur Brothers Company.—Important contracts have been in the construction of the Burlington and Northern Railroad; Atchison, Topeka and Santa Fe Railroad; Chicago, St. Paul and Kansas City Railroad; Chicago and Eastern Illinois Railroad; four sections of the Chicago Drainage Canal; Illinois Central Railroad; also over 1,000 miles of other railroad construction; construction of the Wachusett dam for the Metropolitan Water Board, at Clinton, Mass., the second largest masonry structure in America.

Six ship locks, having been constructed for the United States Government.

Among other important works under construction at this time by this firm may be mentioned the large contract with the United States Government for the construction of 3 miles of channel through the West Neebish Rapids for the new entrance to the Sault lock at the Sault Ste. Marie.

Construction of many other important masonry structures, foundations, bridge work, etc.

Walston H. Brown & Bros. (successors of Brown, Howard & Co.).—St. Paul and Sioux City Railroad; Chicago, St. Paul and Minneapolis Railroad; Lake Erie and Western Railroad; Peoria, Decatur and Evansville Railroad; Toledo and Ohio Central Railroad; Buffalo, Rochester and Pittsburg Railroad;

Cincinnati, Jackson and Mackinaw Railroad; New York, Chicago and St. Louis Railroad (Nickel Plate); Duluth, South Shore and Atlantic. Also contractors for the new Croton Aqueduct for the city of New York, consisting of 16 miles of rock tunnel.

Kilpatrick Brothers & Collins Contracting Company.—Over 2,000 miles of railroad construction, principally west of the Missouri River, including principal contracts for the extension of the Union Pacific Railroad Company; Chicago, Burlington and Quincy Railroad, and Chicago Northwestern system in the West, together with a large amount of other general work of an important nature.

Coleman, Breuchard & Coleman.—Have just completed the new Croton dam, the largest masonry dam in the United States; likewise much other important work of a similar nature.

Arthur McMullen & Co.—Have been engaged in some of the heaviest foundation and bridge construction work in the country, notably the construction of the important bridge structure on the Wabash extension to Pittsburg, together with the construction of the important masonry structures in connection with the Pennsylvania Railroad terminal at Washington, and much very large concrete and bridge work for the Pennsylvania Railroad.

T. A. Gillespie & Co.—The St. Lawrence Power Canal (12 miles in length): East Jersey water-supply dams; locks and dams for the United States Government in West Virginia; also work on the Wabash system.

R. G. Packard Company.—The following is a summary of the most important work done by R. G. Packard, president of the R. G. Packard Company:

Canal at Aransas Pass, Tex.; submarine rock excavation at Hell Gate, Hallett Point, Man o' War Rock, Shell Reef, Third and Twenty-sixth streets reefs, New York Harbor; Saugerties, N. Y., and Pawtucket River, Rhode Island; all for the United States Government.

Dredging contracts: Lubec, Portland, Me.; Boston and Woods Hole, Mass.; Providence, Newport, and at various other harbors on Long Island Sound.

Numerous contracts in the harbor of New York, including navy-yard, East, Harlem, and North rivers; Raritan Bay, Raritan River, Philadelphia, Norfolk, and Baltimore; all for the United States Government.

Contracts for dredging for the city of New York, large portion of same done on the Chelsea section from West Tenth to West Twenty-third streets.

Dredging for the West Shore Railroad at Weehawken; also for New York Central and Hudson River Railroad Company, Lehigh Valley Railroad, Pennsylvania Railroad Company.

Filling with pump dredges: League Island Navy-Yard, Philadelphia; Canarsie, Coney Island, and Shrewsbury River.

Sinking piers of the Poughkeepsie Bridge across the Hudson River.

Repairs to Dry Dock No. 3, navy-yard, Brooklyn, including cofferdam and its removal.

Breaking up and removing numerous wrecks for the Government.

Building, designing, dredging, and submarine blasting machinery on which has been allowed several patents.

In addition to the above, a large amount of work for private parties.

The construction work above mentioned has, it is thought, comprised almost every detail which will be met with in the construction of the Panama Canal, and in its accomplishment has called for the highest order of constructive ability and an intimate knowledge of detail in large open excavations, tunnels, dams, locks, masonry, dredging, difficult foundation work, and in the installation and operation of large plants and machinery of all kinds, and the masterly control of labor problems and the handling of large armies of workmen by means of perfected organizations which have been created by and are an integral part of the contracting firms above represented.

The financial standing and integrity of the firms represented, and their record of large undertakings successfully carried on to completion, are unquestioned, and in addition to this, the company's own resources are augmented by a guaranteed credit of $10,000,000.

The Union Construction Company offers to undertake the construction of the Panama Canal according to the plans and specifica-

tions of the United States Government upon the following terms and conditions:

First. That five of the best-known and most experienced experts be appointed as a committee to estimate the cost of construction and fixing the time for completing the canal ready for actual use in accordance with the plans and specifications of the United States Government; that three of these experts be appointed by the United States Government and two by the Union Construction Company.

Second. That the estimate of the cost of constructing the canal and the time of completion, as arrived at and agreed upon by the unanimous vote of the five experts referred to, be the basis on which the Union Construction Company shall undertake to construct the canal.

Third. That the Union Construction Company shall agree to devote its entire time and energies to the construction of the canal, and its officers, directors, and engineers and superintendents shall use their best endeavors to accomplish the work in the shortest possible time and at the lowest cost price.

Fourth. That the Union Construction Company will proceed at once after the contract has been awarded to it to commence the work, using the latest and best known methods for pushing the work forward, and will employ as large a force of men as can be advantageously used in accomplishing the same. The Union Construction Company will at once proceed to install suitable electric plants to furnish electric light and power, so that the work can be made continuous, day and night, with such shifts of men as may be found most advantageous for the most rapid construction possible; also for the use of electric power where it can be used to an advantage, either in regard to expense or in saving time.

Fifth. That the Union Construction Company shall receive a commission of 5 per cent on the cost of building the canal as compensation for its services in constructing the same, provided it shall accomplish the work within the amount named as its estimated cost by the five experts hereinbefore mentioned and within the time fixed by the said five experts, it being understood, however, that a bonus of ——— per month is to be paid the Union Construction Company for each month of thirty days or fraction thereof the contractors shall complete the canal ahead of the time fixed.

Sixth. If, however, the cost of construction of the canal should exceed the sum stated by the said five experts as its estimated cost, then for each ten millions of dollars over and above said sum that the canal costs to construct the said Union Construction Company shall lose 1 per cent of its commission, and a proportionate amount for a smaller sum than $10,00,000 excess of cost, so that in the event that the cost of construction of the canal should exceed by $50,000,000 the estimated cost as fixed by the five experts, then in that event the Union Construction Company would receive no compensation whatever for constructing the canal.

Seventh. If the Union Construction Company shall succeed in building the canal for a less amount than the sum fixed upon by the said five experts as its probable cost, then in that event the United States Government shall receive 50 per cent of the amount so saved and the Union Construction Company shall receive 50 per cent of the amount so saved over and in addition to its commission of 5 per cent on the amount that the canal has cost to complete.

Eighth. That the Union Construction Company shall devote its entire energies and capital to the fulfillment of this one work and shall undertake no other construction work until the completion of the canal and its acceptance by the United States Government.

Ninth. That all supplies and material necessary for the construction of the canal shall be bought in the name of the United States Government or by the Union Construction Company, only, however, upon the request and approval of the Chief Engineer of the Panama Commission.

Tenth. That the Union Construction Company shall carry on the work of construction according to the plans and specifications of the United States Government and shall consult and work in cooperation with the Isthmian Canal Commission in fulfilling its contract.

Eleventh. That the chief engineer of the Isthmian Commission shall estimate about the 1st day of each month the amount of work actually done and the material furnished by the Union Construction Company during the preceding month and the amount due said Union Construction Company on account of such work so accomplished and aproved by him, and also a certificate for the amount due for supplies and materials purchased, delivered and accepted by the said chief engineer on behalf of the United States Government; and that upon the receipt of said estimate due the said Union Construction Company, the United States Government will promptly pay the sums so named on both of the above accounts to the Union Construction Company.

Twelfth. That the United States Government should turn over to the Union Construction Company for its use during the construction of the canal all its plants, machinery, tools, and appurtenances used in constructing said canal, the same to be returned to the Government when the canal is completed, ordinary wear and tear excepted, and the contractors are to have the privilege of availing themselves of all the laborers and personnel of the business at the time of the execution of the contract in order that the work may be promptly and continuously pursued.

Thirteenth. The Union Construction Company should either have the control of the Panama Railroad during the construction of the canal, agreeing on its part to take care of the general business offered to the railroad for transportation or that an agreement should be made between the Government and the Union Construction Company that the railroad company will at all times furnish the necessary cars and power to handle its material and that the necessary additional side tracks and switches which the Union Construction finds necessary to enable it to handle its material to the best advantage shall be promptly furnished so that no delay will arise in consequence of want of transportation facilities.

The first work of the Union Construction Company would be to arrange its transportation facilities commensurate with the work it has in hand and at the same time to see that its electric power plant was erected at once, so that the work could be continuous night and day.

The Union Construction Company would also, with the advice and approval of the chief engineer, at once see that suitable accommodations for housing its employees were ready and placed where re-

quired, and that its commissary department was in condition to properly feed its employees.

The United States Government shall have exclusive and entire charge of the policing and the sanitation of the canal system.

The amount of work to be done in order to produce the greatest results, both in the economy of cost of construction and in the time required to complete the work, is so great that the question of a prompt decision as to whether the Union Construction Company can have the contract is of the utmost importance.

The above rough suggestions are respectfully submitted and are not binding upon either party, but are made preliminarily to the contract with the Government.

WALSTON H. BROWN & BROS.,
Chairman Board Directors.

NEW YORK, *August 16, 1906.*

ISTHMIAN CANAL COMMISSION,
DEPARTMENT OF CONSTRUCTION AND ENGINEERING,
Culebra, Canal Zone, July 27, 1906.

Mr. T. P. SHONTS,
Chairman the Isthmian Canal Commission,
Culebra, Canal Zone.

SIR: The type of canal to be built having now been decided and the preliminary work necessary for construction being well along, so that energetic and intelligent plans, which have hitherto been impossible, looking to the completion of the canal, can now be put into execution at the earliest date and at the least practicable expense, so that now seems the proper time that the chief engineer should express his views as to what, in his judgment, will be, all things considered, the best method of building the canal.

There are two ways to be considered, viz: The Commission to build it directly, by "days' work," so called, or to build it by contract with outside parties.

Of the two methods I decidedly prefer the latter, if it can be properly put into effect.

I regard it now as impracticable to undertake to divide up the work into a number of small parts and to try to let each part to a separate firm of contractors. There are so many perplexing elements and questions, such as the control of labor in supply and price, repairs to and maintenance of plant and equipment, the necessary relations of many contractors to the Panama Railroad, together with the absolute certainty that, in spite of our best efforts to guard against it, one or more of the contractors would prove unsatisfactory, and an undue delay of any one part of the work would delay the whole. Formerly I was of the opinion that these objections could be overcome, but I am not now of that opinion.

I am strongly opposed to endeavoring, by advertisment or otherwise, to let the entire work to any one firm or construction company, by either lump sum or by unit prices. Such a proceeding would, I believe, take too much power or control of the work out of the Commission's hands and place it in the hands of the contractors. It

would also render a combination probable to govern prices and time, which might result in disaster and would, in case of delays and difficulties, cause such loss of time that would long postpone the completion of the canal.

It is probably true, however, that for many reasons most of the actual work of constructing the canal can be best handled by men and methods trained and practiced by first-class contractors. In my own experience, extending over thirty years, I know that the large contracting firms have a following of experienced superintendents, foremen, subcontractors, and laborers, which it would be an impossibility for the Commission to duplicate. As a matter of common business judgment we should avail ourselves of the best skill and experience, and these will be found among the contracting firms of the United States.

This is no small undertaking, but one that calls for the united and untiring efforts of the best brain and muscle that the United States can produce, and there is no one man capable, either physically or mentally, of carrying in all its details this stupendous work to a rapid and successful conclusion. But by associating with us the best of all the needed elements we can do the work quickly and well.

I beg to attach some memoranda which I have drawn up inviting your attention to a plan which if carried into effect will, I know, solve the problem in a satisfactory manner.

The plan is simple and effective. It is only to carry out the work of building the canal proper by percentage paid to an association of contractors.

I may remark that for a number of years I have followed about the same plan in carrying out large and important works, and have been much pleased with results.

Any contractor who carries out successfully any part of this work is clearly entitled to a fair profit as remuneration for his time, the use of his plant and money. Any man who bids on any or all of this work will, if he bids intelligently and *honestly*, intending honestly to carry out his contract, allow for, and will make provision for, every contingency he can imagine. He will have to do so to insure himself against financial disaster.

It is not probable, though possible, that *all* these adverse conditions will be met. If they are not, or any one of them, then the contractor makes an exorbitant profit and the Commission pays more than it should. A *bond* will not build this canal, and in the end the United States must pay the cost of it; the contractors can not be expected to.

By the plan I have outlined, you will note, the following strong points are covered:

We get the combined efforts of the best and most experienced class of men on earth, each a specialist in his particular line, together with his following of trained employees, themselves a tower of strength.

We are assured that our contractors are possessed of all necessary financial backing, and we are protected by a bond, in so far as a bond is protective in any case.

We will know exactly what the work costs, in every part, and we

also know that we will be paying only a fair and legitimate profit on the cost of the same.

We are destroying all incentives to make the construction cost as much as possible; on the contrary, we are penalizing all such attempts and making economical work an object.

We are also offering every incentive to hasten the time of completion of the work, and can well afford to pay the bonus mentioned. In five years' time our interest charges will be $2,500,000 per year, or $200,000 per month—double the monthly bonus offered.

We will, by drawing into the contracting firm members from different parts of the country, be practically establishing the most effective system of labor agencies possible in the United States, and will be securing the cooperation of the most powerful interests that can be combined, to aid us in keeping our ranks of foremen, locomotive engineers, steam-shovel men, and mechanics of all classes full of the best men of all classes.

We will also be disarming a strong interest in the United States which is now, to say the least, not helping us, but, as I have good reason to believe, is handicapping us in our efforts to secure competent employees. Their interests are now in the United States. Then they will be here and with us, and such a combination as proposed will of its own strength override any possible opposition or criticism of the work.

And the fact that the construction of the canal was being undertaken by the best contractors in the United States will appeal so favorably to the people at large that I think popular confidence would be so strengthened and public faith that success was already assured be so strong that practically unanimous support would come from all classes, and such support is of vast moral and material aid. The best trained talent of the world, backed by the United States Government—can any plan be stronger?

And as vital a point as any is the fact that we are absolutely keeping the control of the work in our own hands and entirely under the direction of our engineering staff; and I think the censensus of opinion of the American engineers would be that a work of this character and magnitude, with the peculiar and enormous interests involved, can, in justice to ourselves who are intrusted with and will be held accountable for it, be carried out in no other way.

I will say that I have considered this matter for several months, and have good reason to believe that such a plan, presented to the right parties, will be received with favor, and that such an organization can be speedily and satisfactorily effected, at a percentage of remuneration not to exceed 6 per cent, which I would not consider, under the circumstances, as too great.

I think no time should be lost in considering this proposition, and, if favorable, acted upon in effecting an organization. I believe all matters can be successfully arranged in three months' time, if we act promptly, and I desire to recommend strongly that action be not delayed.

Truly, yours,

JNO. F. STEVENS,
Chief Engineer.

ISTHMIAN CANAL COMMISSION, DEPARTMENT OF CONSTRUCTION AND ENGINEERING.

[Memorial for contract by percentage.]

It is proposed to form a construction company to be composed of from ten to fifteen first-class railroad and general contractors, to be taken from as many points in the United States as practicable, each having abundant financial resources, experience in their special lines of work, and to have as large a following as possible of experienced foremen and subcontractors.

The amount of capital stock of said company—$25,000,000—to be subscribed to in such proportions as the individual members of the company may settle, to be fully paid up or provided.

The company to give a bond for the successful prosecution and completion of the work to the amount of $10,000,000.

Call this construction company thus formed, in the succeeding memoranda, "The Contractor." Call the Isthmian Canal Commission "The Commission."

Form a joint committee of five, consisting of two representatives, engineers or otherwise as the Contractor may elect, to represent the Contractor, and three members to be chosen by the Commission, one of whom shall be its chief engineer, who shall be the chairman of the said committee, to fully investigate all engineering data which has been accumulated as regards quantities, classification, character of work, etc., and this committee to agree upon an approximate total estimate of the cost and time needed to complete the so-called 85-foot level lock canal between the waters of the Caribbean Sea at Colon and the waters of the Pacific Ocean at La Boca, on the Isthmus of Panama, all as authorized and approved by Congress.

The work to be embraced under this contract to be only that of canal construction proper, and will consist of the following items:

All dredging, clearing, and excavation from the locks to the ocean at each end of the canal.

The construction of the Gatun dam.

The construction of the Gatun locks and regulating works.

The clearing and excavation from the Gatun dam to Bas Obispo.

The excavation and complete execution of taking out the Culebra cut, so-called, from Bas Obispo to the dam and locks at the southern end of the canal.

The construction of the dams at the southern end of the canal.

The construction of the locks and regulating works at the southern end of the canal.

The reconstruction of the Panama Railroad on new line or lines as required by the location and construction of the canal.

And in case it is decided that breakwaters are to be constructed at either the north or the south end of the canal for the proper protection of entrances to the canal, then a supplementary contract, based on the same rate of percentage, to be agreed upon between the Contractor and the Commission for the execution of the work of completing the breakwaters on the same terms as are proposed for the items enumerated above.

To make a contract as between the Commission and the Contractor, whereby the latter undertakes to carry out the work enumerated in the items given above, being the construction of the canal proper, on the following terms:

The Commission to pay the Contractor, as total remuneration for his carrying out the work as undertaken, ———, the percentage to be based on the above total estimate as agreed to by the committee, and said payment to be made only on the conditions as given below, viz:

The Contractor to receive no percentage at all until the entire completion of the work embraced in the contract is accomplished. For every $10,000,000 that the final cost overruns the agreed estimate, the rate of percentage proposed to be paid to the Contractor to be lessened by 1; so that, for example, if the Contractor's percentage is fixed at 6 per cent, and the final cost should overrun the estimated cost $60,000,000, then the Contractor would receive no compensation at all.

If the final cost should be less than the amount agreed upon by the committee, then the difference, or profit, is to be divided, one-third of the same to go to the Contractor and two-thirds to the Commission.

For every year of time taken by the Contractor to complete the work beyond the estimate of time as agreed upon by the committee, the rate of per cent proposed to be paid to the Contractor to be lessened by 1. For every month that

the Contractor saves by completing the canal before the time agreed upon by the committee the Contractor to receive a bonus of $100,000.

The Commission, through its own organization and forces, separate and distinct from the Contractor, will carry out the following work:

Government and sanitation.

The handling of material and supplies.

Municipal engineering, covering the construction of waterworks, sewers, roads, and streets in towns and camps.

Building construction, covering the building of new and repairs to all structures needed for quarters of all classes of employees, both for the Commission and the Contractor and for Government uses, including the sanitary department.

Branch of labor and quarters.—The Commission, through its branch of labor and quarters, shall furnish all quarters for all needed employees of the Contractor at such points and of such character as may be approved by the chief engineer and the sanitary department, with reasonable promptitude, and will maintain and police same in every respect the same as it does quarters for its own employees.

Mechanical division.—The Commission will operate such machine and allied shops, furnishing same provided with proper tools and equipment, as may be necessary to properly care for and maintain all equipment, whether of the Commission or the Contractor; such maintenance of equipment being, however, understood to mean ordinary shop repairs, the Contractor being understood to make all outside yard or running repairs, excepting those necessitating so-called "shopping;" and the Commission will furnish such material and tools as can economically be made in the shops for use of both the Commission and the Contractor. And all machine or shop work done as above by the Commission for the Contractor will be billed to the latter at actual cost plus 15 per cent.

Bureau of material and supplies.—The Commission will maintain its local storehouses and storekeepers, and furnish on proper requisitions all needed material, tools, etc., for both the Commission and the Contractor, on the same and usual basis of cost plus store expense, etc., and will furnish these materials and supplies to the Contractor precisely the same as to itself, entering the value of same in book accounts to properly obtain the cost of the work. All quarters, offices, engines, shovels, drills, dredges, and other equipment needing water will be furnished with same by the Commission free, whenever the supply is ample, from the water mains of the Commission.

Fuel, either oil, coal, or wood, will be furnished the Contractor on the same terms as supplied to the Commission.

The Commission will furnish the Contractor with funds at monthly or semimonthly periods, as may be decided, sufficient in amount to cover the pay rolls for the current pay period for all employees of the Contractor, who shall disburse same according to legal and established methods, as required by the statutes and rulings of the Treasury Department of the United States, and make such returns of same to the auditor of the Commission as the latter may direct from time to time.

The Contractor will take over and put into use at the time of his assuming charge of the work embraced under his contract all new and modern plant that may be owned by the Commission at that time and all such old plant that the Commission may own and that the Contractor desires to use.

The Commission will buy and own all new plant used in the execution of the Contractor's work excepting when the Contractor sublets any part of the work, when in such case the Contractor or the subcontractor will furnish the necessary plant at his or their own cost.

All of the equipment owned or that may be acquired by the Commission under the conditions as expressed above will be furnished the Contractor free of rental or other charges, and will be returned by the Contractor to the Commission on the completion of the work embraced in the contract or at the termination of the contract for any cause whatever, in as good condition as received, ordinary wear and tear excepted.

The Contractor will take over in his employ all employees on the pay rolls of the Commission then on the Isthmus, at the date of his assuming the work he contracts to do, who may be employed on the work which is designated to be executed by the Contractor under this contract.

And no employee on the gold rolls, so called, who is taken over by the Contractor as above defined, will be reduced in salary or be discharged, excepting

for failure to give proper service to the Contractor, and then only on and with the approval of the chief engineer.

It is understood that all the rules established and put in force or that may be established and put in force from time to time by the sanitary department of the Commission during the life of the contract, said rules being necessary for the protection of the health of officers and employees, and therefore the fundamental requirement for the successful prosecution of the work, are to be strictly enforced and respected in every minute particular by the Contractor and through him by his employees.

The same commissary and mess-house privileges that are given the employees of the Commision shall be given the employees of the Contractor; but the Contractor may assume charge, if he desires, of the operation of all eating and lodging houses necessary for the proper accommodation of his or of the Commission's employees. He may conduct the operation of these houses directly or by a contract with a third party. But in any case, the terms of such contract and the operation of such eating or lodging houses shall in all details be subject to the approval of the chief engineer regarding prices, privileges, and general methods; and shall also be subject to the daily inspection by any party whom the chief engineer shall designate for such inspection duty, and any directions or modifications which the chief engineer may consider necessary for the proper housing and feeding of the employees shall at once be carried out by the Contractor.

The profit or loss to the Contractor arising from the operation of these houses shall be credited to or debited to the general account in fixing the total cost of the work under contract.

In order to successfully supply the work with the proper number of common laborers, it is necessary that the recruiting of all foreign common labor shall be done by and under the authority and protection of the United States. Therefore the Commission, through its agents, will arrange for the contracting and furnishing of all such necessary common labor, and just as far as possible the same is to be of the character and numbers as desired by the Contractor. All the expense of such recruiting, transporting, caring for, and repatriating such common labor shall be properly divided between the Commission and the Contractor in exact proportion to the number of such common laborers each party receives at the time of its arrival on the Isthmus.

Transportation of the Contractor's employees and employees' families from and to points in the United States and the Isthmus of Panama shall be on ships of the Panama Railroad Steamship Company as far as practicable in the decision of the Commission, and in no case shall the rates to be charged the Contractor for such transportation be to exceed one-third the regular published tariff rates for commercial passengers. In case the amount of such rates and such transportation as may be afforded by the Panama Railroad Steamship Line be not deemed ample and satisfactory by the Contractor, he may employ other lines in such business, or he may establish his own line, but only for the handling of his own employees and their families.

The use of the Panama Railroad tracks by work trains of the Contractor will be arranged for as the necessities for same may require. The work trains of the Contractor, manned by his own crew and furnished with fuel and other supplies at his own cost, will be given free trackage rights from canal cuttings to the various dump grounds and return, the Commission assuming the cost of all such trackage rights.

The Commission will also assume the cost of construction of any additional trackage or other additions to the facilities of the Panama Railroad which may be needed by the Contractor in the execution of the work embraced under his contract, the amount and character of such work being subject to the approval of the chief engineer.

The Contractor's employees shall be allowed transportation on the trains of the Panama Railroad at exactly the same rates as are paid by the Commission for its own employees, such rate in no case to exceed one-half of the regular published tariff rates for commercial passengers.

The Commission, through its engineering staff, will furnish all plans, specifications, lines, levels, measurements, and directions necessary to enable the Contractor to properly conduct his work. It will also give monthly or other necessary estimates that the Contractor may require to enable him to make settlements with his subcontractors.

It will also, through its chief engineer, make final decision as to the completion of any and each part of the work from time to time, and also make decision

as to the final and complete execution of all the work embraced under this contract.

All of the engineering work as described above to be under the supervision of the chief engineer and such engineers as he may designate from time to time to represent him.

The Contractor shall at all times during the progress of the work under this contract, as called for by the auditing department of the Commission, furnish the Commission with any and all figures or data relative to the execution of the work, cost, and distribution of same, and such figures shall be full, accurate, and complete, and the Contractor shall, if the Commission so requests, allow the general auditor of the Commission access to his books, accounts, and pay rolls for the purpose of enabling the auditor to examine, verify, or otherwise audit such books, accounts, and pay rolls.

It is understood that gold, or the legal currency of the United States, is the standard of all the monetary considerations mentioned in this contract.

It is understood that wherever the words "chief engineer" are used in this contract that the chief engineer of the Isthmian Canal Commission is meant and none other, and that the work in all its phases and details is to be absolutely under the direction of the Commission, through its chief engineer, who shall approve or disapprove without the privilege of appeal on behalf of the Contractor excepting to the chairman of the Commission any and all acts of the Contractor regarding the amount and character of plant, material, methods of work, amount and character of laborers, wages and working hours of laborers, rates of salary and working hours of all gold, or white, employees.

ISTHMIAN CANAL.

UNITED STATES SENATE,
COMMITTEE ON INTEROCEANIC CANALS,
Washington, D. C., Tuesday, February 12, 1907.

The committee met at 10.30 o'clock a. m.

Present: Senators Millard (chairman), Kittredge, Ankeny, Hopkins, Carmack, and Culberson.

In executive session the committee asked to have printed in the record of hearings before the committee any report on file with the Isthmian Canal Commission relative to the recent flood of the Chagres River.

In response to a request of Chairman Millard the following report was transmitted by the secretary of the Isthmian Canal Commission:

ISTHMIAN CANAL AFFAIRS,
OFFICE OF ADMINISTRATION,
Washington, D. C., February 13, 1907.

SIR: By direction of the chairman, and in accordance with his personal promise to you, I have the honor to inclose herewith a copy of a very complete report received from the Isthmus relative to the recent flood of the Chagres River, which, it is stated, is "without doubt second only to that of 1879."

In reference to your request for a record of water stages during the whole of the last season, this office has not regularly received detailed reports on this subject, but a cable request has been sent to the Isthmus to send by next mail hydrographic reports of the Chagres River for the past six months. As soon as these reports are received they will be promptly transmitted to your committee.

Very respectfully,

JOSEPH BUCKLIN BISHOP, *Secretary.*

Hon. J. H. MILLARD,
Chairman Committee on Interoceanic Canals,
United States Senate.

[Inclosure.]

ISTHMIAN CANAL COMMISSION,
DEPARTMENT OF CONSTRUCTION AND ENGINEERING,
Culebra, January 8, 1907.

SIR: I beg to forward report from Division Engineer Arango, dated December 18, relative to the recent flood on the Isthmus of Panama.

Respectfully,

E. P. SHANNON,
Secretary to Chief Engineer.

Mr. JOSEPH B. BISHOP,
Secretary Isthmian Canal Commission,
Washington, D. C.

DECEMBER 18, 1906.

SIR: I beg to submit the following report in connection with one of the greatest of floods yet recorded of the Chagres River—that we have just witnessed—which is without doubt second only to that of 1879, and far surpassing in magnitude the five previously recorded since the French company began operations in the canal route. Our records show that the month of November had been one of exceptionally heavy rainfalls, and from the 15th to the 18th a freshet of such magnitude swept down the stream that we were induced to consider it as a quasi flood and to class it as the smallest of the great rises of the river. After this occurrence there was a steady downpour over almost the entire Isthmus, as far as the information I have been able to collect demonstrates. From November 21 to December 1 there had fallen at Colon 7.51 inches, at Alhajuela 5.98 inches, at Gamboa 5.71 inches, at Bohio 3.28 inches. By the end of the 2d of December the distribution on the basin was 11.75 inches at Colon, 8.78 inches at Alhajuela, 8.96 inches at Gamboa, 6.10 inches at Bohio. On the 3d of December the precipitation increased, the rainfall for that day being 4.75 inches at Colon, 5.16 inches for Alhajuela, 3.71 inches for Gamboa, 3.59 inches for Bohio. These heavy showers of the 2d and 3d, on ground almost saturated with water, produced the great rise, which began to be felt at Alhajuela at 2 p. m. on the 2d, at Gamboa at 6 p. m., reaching Bohio at 10 o'clock on the night of the 2d. At Alhajuela the rise was sudden. In twenty hours the maximum elevation was reached, the river attaining here a height above low water of 26.89 feet, and discharging 92,100 cubic feet per second.

At Gamboa, twenty-four hours after its effects were noticed, the river had risen 35.65 feet above low-water mark, the discharge at this stage being 76,066 cubic feet per second. Once the maximum was attained, the river dropped rapidly, and after thirty-six hours it had subsided 29 feet.

The crest of the wave did not reach Bohio until 7 a. m. of the 4th, where its elevation was 38.65 feet above low-water mark, which is sea level at this place. The discharge at this stage was 108,026 cubic feet per second. At 9 a. m. the elevation had dropped to 36.65 feet, then descended gradually until at 4 p. m. of the 6th it had dropped below the freshet stage.

To obtain comparisons between this and previous floods we can only refer to our estimates for Gamboa and Bohio, as these are the only stations at which past floods of the Chagres have been recorded. Considering the maximum discharge per second of time, there is no doubt that the present flood has surpassed all previous ones in magnitude. If, on the other hand, we accept forty-eight hours as the period of danger at Gamboa with the object of comparing these great rises with a view to their regulation before admitting them to the waterway, we must conclude that in magnitude it fell below the floods of 1885 and 1888, due to the shorter duration of its high stage at this station.

At Bohio the conditions were different, the rise and fall being more gradual, as the lower tributaries contributed well toward the flood, and the reserved volume stored in the flooded areas of the lower subbasin maintained its duration during a long period, making the resulting figures of our estimates far above those obtained by General Abbot in his able treatment of this subject. The only flood approaching it in magnitude at Bohio was the flood of 1888, which, during a

period of thirty-three hours, discharged at the rate of 73,320 cubic feet per second, while for the same period the present flood discharged 84,956 cubic feet.

In this connection I beg to call your attention to the two different ways by which we will be able in the future to predict these great risings and give advance notice of their coming to protect the works at Gatun. Both of these methods will be put into execution as soon as the required installations, now well under way, are completed.

By means of a study of the rain storms, and following General Abbot's analysis in regard to retardation of the rainfall, a graphic chart has been prepared showing the lapse of time between the downfall and its manifestation at Bohio. In this particular case an advance notice of twenty-four hours could have been given if we could have been able to obtain promptly the rainfall data from Alhajuela, which station has just been reestablished.

The other method is by a study of the relation existing between the gauge heights and discharges at the three stations. By this method we could, after the crest of the flood had passed Alhajuela, advise Gamboa eight hours and Bohio twenty hours in advance as to the height and intensity of the flood and the time it would reach each of the lower stations, thus giving ample time to take the necessary precautions to protect the works at Gatun.

These studies are receiving careful attention, and when completed a recommendation will be made to you for a system of signals to be used whenever the river is reaching the danger point.

METHODS OF OBTAINING MEASUREMENTS.

In measuring this flood both floats and current meters were used. At Gamboa few measurements could be obtained, as the rise was so rapid that the banks were soon overflowed and the men were unable to perform any work. There is no good site for gauging high stages of the river in this vicinity; but great care was taken to secure the correct heights, to correct and compare the fluviograph readings, and hourly observations were made during the time of the flood. These observations have permitted us to make the right estimates and save the records here, as the steps of the fluviograph were carried away and we had no means of examining the instrument, which stopped working about ten hours before the maximum height was reached.

At Bohio the high-stage gaging station is well located, and appended you will find a tabulation of the observations taken there. (Exhibit A.) But even here the violence of the flood was such that the great trees that were carried down cut the ropes controlling the gaging car and completely upset the work. The left bank early in the flood showed signs of giving way, and later a section between 30 and 40 feet in from the river slid in, taking with it our cable supports and wrecking the gaging apparatus. The apparatus for releasing floats from the bank was also carried away by trees and we had to resort to taking measurements from our canoe. The work was dangerous and extremely difficult, but the men continued until the canoe was struck by floating logs and put out of commission, being badly cracked. Enough data was secured, together with that obtained during the November flood, to permit us to control our estimates from gage heights.

The resurveying of the cross sections is being pushed as rapidly as possible, and as soon as this work is completed and it is possible to estimate the discharges, especially during the period when the river was falling, a supplementary report will be prepared giving you the completed data and embodying such other comparisons between this and previous floods as we shall then be enabled to make. In the meantime it has been deemed advisable in this report to give you the general characteristics and magnitude of this flood in comparison with others of which we have record.

Appended you will find the following:

Exhibit A.—Observations made at Bohio. (Incl. 27.)
Exhibit B.—Daily and accumulated rainfall November 21 to December 5. (Incl. 28.)
Exhibit C.—Bihourly estimated discharge at Alhajuela, Gamboa, and Bohio. (Incl. 29.)
Exhibit D.—Graphic chart of the bihourly discharges of the great floods of the Chagres at Gamboa. (Incl. 30.)
Exhibit E.—Graphic chart of the bihourly discharges of the present flood at Alhajuela, Gamboa, and Bohio. (Incl. 31.)
Exhibit F.—Graphic chart of the retardation of rainfall before reaching Bohio. (Incl. 32.)
Exhibit G.—Photographs taken illustrating conditions caused by the flood. (Not marked.)
Exhibit H.—Summary of great floods. (Incl. 33.)

In preparing this data the estimated discharges have been given preference over the actual measurements in order that a comparison could be made from the same base used in estimating the past floods, and because I have implicit confidence in the reliability of the rating table prepared for the three stations by one who is such an authority on the subject-matter of this report as General Abbot.

In conclusion, we may say that so far the system of river regulation, considering this great flood, provides ample limits for the formidable floods that, although of infrequent occurrence, would be a menace to the waterway if improperly cared for.

Very respectfully,

RICARDO M. ARANGO,
Division Engineer.

Mr. JOHN F. STEVENS,
Chief Engineer.

EXHIBIT A.

Memorandum of measurements made during freshet of December 3–6 at Bohio.

Rise:
Float measurements—
December 3, 4 measurements; height from 21.6 feet to 27.9 feet.
Current meter measurements—
December 1, 1 complete set; height 11.7 feet.
December 3, 49 to 100 feet from initial point; height 23.4 feet.
Vertical velocity measurements—
December 1, 140 to 210 feet from initial point; height 12 feet.
December 3, 60 to 100 feet from initial point; height 25 feet.
Fall:
Float measurements—
December 5 to 8, 14 measurements; heights from 28.5 feet to 9.7 feet.

Memorandum of measurements made at the Bohio station during freshet of November 15–18, 1906.

Rise:

Float measurements—

November 15, 16, 17 (8 measurements), height of water from 9.9 to 25.4 feet.

Current meter measurements—

November 16 (1 complete set), height of water 19.4 feet.

November 16, 80, 90, 100 feet from initial point; height 21.6 feet.

Vertical velocity measurements—

November 15, 90, 100 feet from initial point; height 10 feet.

Nov. 16, 60, 70, 80, 90, 100 feet from initial point; height 20 to 23 feet.

Fall:

Float measurements—

November 17, 18 (4 measurements), height 25.4 to 15.6 feet.

Current meter measurements—

November 17, 40 to 140 feet from initial point; height 24.8 feet.

November 18, 170 to 290 feet from initial point; height 16.9 feet.

November 20, height 12.2 feet.

Vertical velocity measurements—

November 17, 50 to 140 feet from initial point; height from 25 feet to 24 feet.

November 18, 170 to 190 feet from initial point; height from 18.3 feet to 15.3 feet.

EXHIBIT B.

Daily accumulated rainfall and daily rainfall from November 21 to December 5, 1906.

	November—										December—				
	21	22	23	24	25	26	27	28	29	30	1	2	3	4	5
Cristobal-															
Accumulated.....	1.04	1.04	2.17	3.16	3.19	3.64	4.30	5.82	7.44	7.46	7.51	11.75	16.50	16.52	16.66
Daily.....	1.04	0.00	1.13	0.99	0.03	0.45	0.66	1.52	1.62	0.02	0.05	4.24	4.75	0.02	0.14
Alhajèula—															
Accumulated.....	0.97	1 07	1.66	1.78	1.78	2.89	2.97	3.57	4.62	5.90	5.98	8.78	13.94	14.08	14.08
Daily.....	0.97	0.10	0.59	0.12	0.00	1.11	0.08	0.60	1.05	1.28	0.08	2.80	5.16	0.14	0.00
Gamboa—															
Accumulated.....	0.85	0.98	1.05	1 09	1.26	1.42	1.46	3.34	3.96	5.74	5.77	8.69	12.40	12.44	12.95
Daily.....	0.85	0.13	0.07	0.04	0.17	0.16	0.04	1.88	0.62	1.78	0.03	2.92	3.71	0.04	0.51
Bas Obispo—															
Accumulated.....	0.87	0.97	1.01	1.05	1.20	1.52	1.61	3.81	4.32	5.96	6.03	9.25	12.73	12.75	13.02
Daily.....	0.87	0.10	0.04	0.04	0.15	0.32	0.09	2.20	0.51	1.64	0.07	3.22	3.48	0.02	0.27
Bohio:															
Accumulated	0.36	0.36	0.93	1.13	1.22	1.33	1.56	2.15	2.99	3.13	3.28	6.10	9.69	9.80	9.98
Daily	0.36	0.00	0.57	0.20	0.09	0.11	0.23	0.59	0.84	0.14	0.15	2.82	3.59	0.11	0.18
Gatun·															
Accumulated	0.74	0.79	1.98	3.21	3.47	3.65	3.79	4.07	5.34	7.21	7.38	12.72	18.10	18.47	18.47
Daily	0.74	0.05	1.19	1.23	0.26	0.18	0.14	0.28	1.27	1.87	0.17	5.34	5.38	0.37	0.00
Brazos Brook:															
Accumulated	0.59	0.59	1.59	2.01	2.10	3.26	3.78	4.29	5.44	5.44	5.46	9.79	14.79	15.19	15.25
Daily	0.59	0.00	1.00	0.42	0.09	1.16	0.52	0.51	1.15	0.00	0.02	4.33	5.00	0.40	0.06
Empire:															
Accumulated	0.47	0.51	0.63	0.67	0.93	1.24	1.60	2.14	5.02	5.96	8.58	11.94	15.17	15.21	15.26
Daily	0.47	0.04	0.12	0.04	0.26	0.31	0.36	0.54	2.88	0.94	2.62	3.36	3.23	0.04	0.05
Camacho:															
Accumulated	0.31	0.38	0.43	0.44	0.82	1.88	2.44	4.28	4.70	6.50	6.91	9.32	12.44	12.54	12.54
Daily	0.31	0.07	0.05	0.01	0.38	1.06	0.56	1.84	0.42	1.80	0.41	2.41	3.12	0.10	0.00
Culebra:															
Accumulated.....	0.69	0.78	0.98	1.20	1.67	2.26	2.68	3.52	4.35	6.75	6.77	9.34	12.64	12.71	12.72
Daily.....	0.69	0.09	0.20	0.22	0.47	0.59	0.42	0.84	0.83	2.40	0.02	2.57	3.30	0.07	0.01
Rio Grande:															
Accumulated.....	0.64	0.85	0.85	0.85	1.23	1.91	2.15	3.67	4.22	5.42	5.45	8.37	11.37	11.40	11.44
Daily.....	0.64	0.21	0.00	0.00	0.38	0.68	0.24	1.52	0.55	1.20	0.03	2.92	3.00	0.03	0.04
La Boca:															
Accumulated.....	0.32	0.32	0.42	0.42	0.59	0.62	0.84	1.17	1.45	1.53	1.97	3.28	4.65	4.87	4.87
Daily.....	0.32	0.00	0.10	0.00	0.17	0.03	0.22	0.33	0.28	0.08	0.44	1.31	1.37	0.22	0.00
Ancon:															
Accumulated.....	0.14	0.29	0.30	0.30	0.61	0.62	0.91	1.17	1.39	1.65	2.07	2.49	4.10	5.67	5.89
Daily.....	0.14	0.15	0.01	0.00	0.31	0.01	0.29	0.26	0.22	0.26	0.42	0.42	1.61	1.57	0.22
Naos:															
Accumulated.....	0.07	0.07	0.10	0.10	0.69	0.71	1.37	1.61	1,91	2.41	2.51	4.54	5.81	5.90	5.90
Daily.....	0.07	0.00	0.03	0.00	0.59	0.02	0.66	0.24	0.30	0.50	0.10	2.03	1.27	0.09	0.00

EXHIBIT C.

Mean discharges during whole of flood period of December 1 to 6, 1906.

Alhajuela ..... 424 cubic meters or 14,973 cubic foot-seconds
Gamboa ..... 496 cubic meters or 17,516 cubic foot-seconds
Bohio ..... 978 cubic meters or 34,537 cubic foot-seconds

The discharge at Alhajuela was 85 per cent of that at Gamboa and 43 per cent of that at Bohio.

The discharge at Gamboa was 51 per cent of that at Bohio.

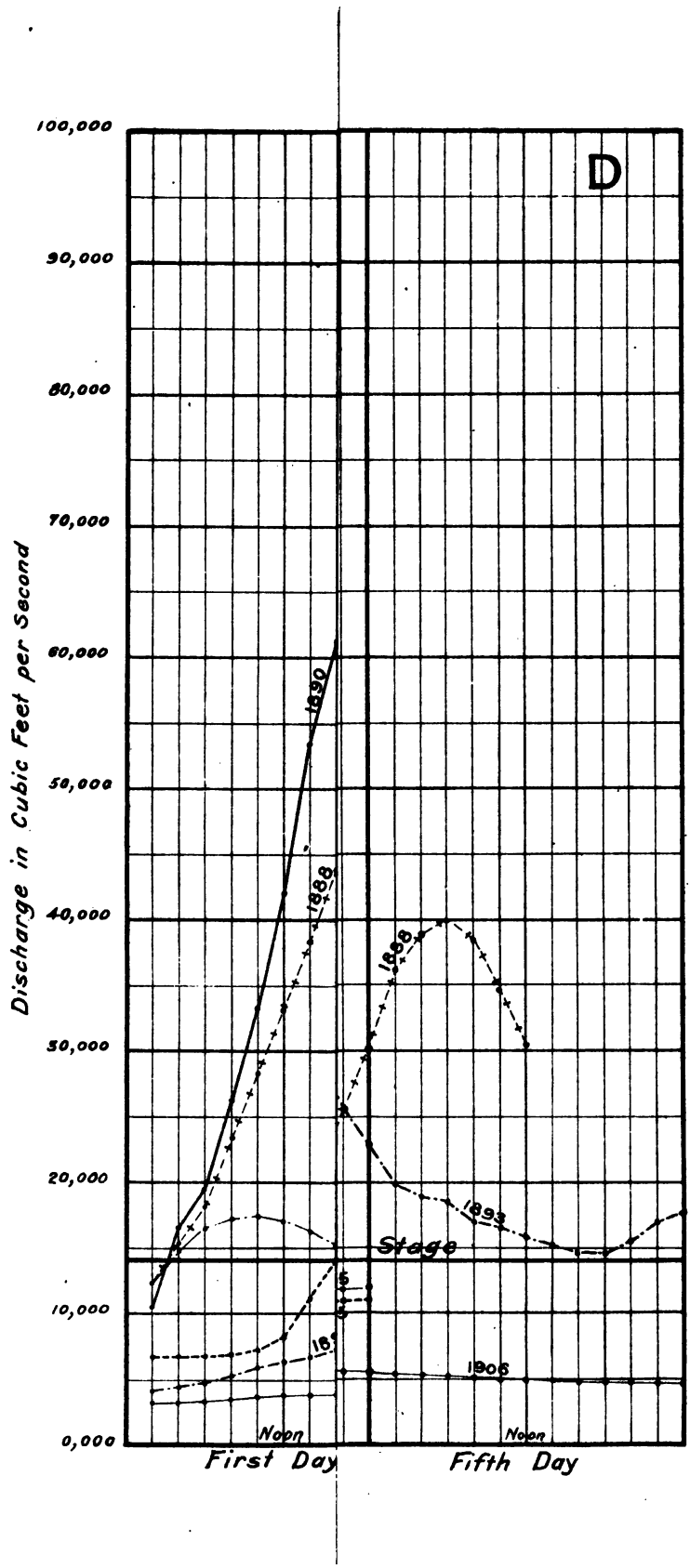
Bihourly discharge estimates.

ALHAJUELA STATION.

1906.

Hour.	December 1.		December 2.		December 3.		December 4.		December 5.		December 6.	
	Height.	Discharge (cubic meters).	Height.	Discharge (cubic meters).	Height.	Discharge (cubic meters).	Height.	Discharge (cubic meters).	Height.	Discharge (cubic meters).	Height.	Discharge (cubic meters).
2 a. m	28.80	78	28.66	62	32.12	999	30.46	479	29.68	225	29.38	167
4 a. m	28.74	71	28.72	68	33.50	1,508	30.31	438	29.63	214	29.37	165
6 a. m	28.70	66	28.79	77	34.70	1,984	30.19	373	29.59	206	29.36	164
8 a. m	28.67	65	28.80	78	35.46	2,292	30.11	320	29.55	199	29.34	160
10 a. m	28.66	62	28.79	77	36.07	2,539	30.95	306	29.53	195	29.33	158
Noon	28.67	63	28.78	76	36.15	2,572	29.98	289	29.51	191	29.32	157
2 p. m	28.66	62	28.79	77	35.20	2,187	29.93	278	29.49	187	29.32	157
4 p. m	28.66	62	28.88	104	34.47	1,892	29.88	267	29.48	186	29.30	153
6 p. m	28.64	59	29.17	174	33.63	1,559	29.84	258	29.44	178	29.28	150
8 p. m	28.64	59	29.26	192	32.68	1,199	29.80	249	29.42	174	29.27	148
10 p. m	28.64	59	29.30	200	31.74	870	29.75	239	29.41	173	29.26	146
Midnight	28.65	60	30.34	446	30.83	584	29.71	231	29.40	171	29.24	143
Sum	344.13	766	348.28	1,631	406.55	20,185	360.91	3,727	354.13	2,299	351.77	1,868
Mean	28.68	64	29.02	136	33.88	1,682	30.08	311	29.51	192	29.31	156

Maximum, 36.24. Discharge, 2,608 cubic meters, equals 92,100 cubic foot-seconds.
Maximum in 48 hours, 1,006 cubic meters, equals 35,490 cubic foot-seconds.


D
100,000
90,000
80,000
70,000
60,000
50,000
40,000
30,000
20,000
10,000
0,000
Discharge in Cubic Feet per Second
1890
1888
1888
1893
Stage
1906
Noon
Noon
First Day
Fifth Day

UNIV OF MICH.

OF MICHIGAN

R
Cubic Meters per Second
27
26
25
24
23
22
21
20
19
18
17
16
15
14
13
12
11
10
9
8
7
6
5
4
3
2
1
0

EXHIBIT H.

SUMMARY OF GREAT FLOODS.

Flood.	Alhajuela.				Gamboa.				Bohio.			
	Maximum height: Feet above low water.	Discharge in cubic foot-seconds.		Per cent.	Maximum height: Feet above low water.	Discharge in cubic foot-seconds.		Per cent.	Maximum height: Feet above low water.	Discharge in cubic foot-seconds.		Per cent
		Maximum.	In 48 hours.			Maximum.	In 48 hours.			Maximum.	In 48 hours.	
1879	.....	.....	.....	.....	36.65	78,614	.....	.....	39.37	112,730	.....	.....
November, 1885	.....	.....	.....	.....	31.51	64,488	43,404	67	33.79	74,800	.....	.....
December, 1885	.....	.....	.....	.....	24.11	44,923	32,421	72	26.41	47,466	.....	.....
1888	.....	.....	.....	.....	31.37	58,132	48,278	83	34.68	79,000	.....	.....
1890	.....	.....	.....	.....	31.82	65,371	34,752	54	32.15	71,660	51,068	71
1893	.....	.....	.....	.....	25.33	43,086	27,971	65	28.54	51,100	43,590	85
November, 1906	16.19	43,121	16,317	38	22.10	40,075	25,003	62	26.08	46,292	38,738	83
December, 1906	26.89	92,100	34,608	42	35.65	76,066	42,377	56	38.65	108,026	74,371	69

NOTE.—Low water at the three stations is accepted at an elevation above mean sea level as follows

	Feet.
Alhajuela	92
Gamboa	46
Bohio	00

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